SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 575.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
EDWARD BATHGATE, MATTHEW PEACOCK, JOHN TOKER, ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1 Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF IN error,
vs.
EDWARD BATHGATE, MATTHEW PEACOCK, JOHN Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch and William Haney, defendants in error. | No. ——

Transcript.

Error to the District Court of the United States for the Western Division of the Southern District of Ohio.

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2 No. 1136.

UNITED STATES DISTRICT COURT,
Southern District of Ohio, Western Division, ss:

In the District Court of the United States within and for the district and division aforesaid. Present: the Honorable Howard C. Hollister, judge. Among the proceedings had were the following, to-wit:

THE UNITED STATES OF AMERICA,
vs.
EDWARD BATHGATE, MATTHEW PEACOCK, John Toker, Jacob Diesenhofer, Harry Otting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch and William Haney. | Indictment. No. 1136.

Be it remembered, that, to-wit: on the twenty-fifth day of January, in the year of our Lord one thousand nine hundred and seventeen, came the grand jurors of the United States of America, within and for the Western Division of the Southern District of Ohio, and pre-

sented to the court their certain bill of indictment herein, which said bill of indictment is clothed in the words and figures following, to-wit:

3 In the District Court of the United States of America for the Southern District of Ohio, Western Division. Of the October Term in the year nineteen hundred and sixteen.

SOUTHERN DISTRICT OF OHIO,
Western Division, ss:

Count One—Section 19, Penal Code.—The grand jurors for the United States of America, empaneled and sworn in the District Court of the United States for the Western Division of the Southern District of Ohio, at the October term thereof, in the year nineteen hundred and sixteen, and inquiring for the division and district, upon their oaths and affirmations, charge and present that Edward Bathgate, Matthew Peacock, John Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, together with other persons whose names are to the grand jurors unknown, through the period of time from October first, nineteen hundred and sixteen, to and including November seventh, nineteen hundred and sixteen, in Hamilton County, within the State of Ohio and within the Western Division of the Southern District of said State of Ohio and within the jurisdiction of the above-entitled court, did feloniously conspire, combine, confederate, and agree together and with other persons whose names are to the grand jurors unknown to injure, oppress, threaten, and intimidate certain citizens of the United States, to wit:

James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T.
4 Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donavan, Lewis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William D. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavey, John Krause, William F. Thompson, and George Hodges, and each of them in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States, to wit:

First, of being candidates for presidential electors from the State of Ohio at the general election which was to be and in fact was held in the State of Ohio, and in the first congressional district thereof, on said seventh day of November, at which time presidential electors for the State of Ohio were to be and in fact were voted for, chosen, and elected, and at which time a United States Senator for the State of Ohio was to be and in fact was voted for, chosen, and elected, and at which time a Representative in the Congress of the

United States of America in said first congressional district of Ohio was to be and in fact was voted for, chosen, and elected.

Second, of being qualified voters appear at the polls and vote at said election for presidential electors.

Third, of having only qualified voters vote at said election for presidential electors.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for presidential electors.

Fifth, of having their election or rejection decided and determined by voters who have not been bribed and by votes which have not been purchased.

Sixth, of having each of the precinct election boards of said election make a true, correct, and accurate count of the legal and only the legal votes cast any qualified voters for presidential electors.

5 First, by then and there bribing a large number of otherwise qualified voters at said elections and promising them in advance of their voting sums of money to vote against said presidential electors and each of them and to vote in favor of opponents of said presidential electors and by causing the said voters so bribed and promised, as aforesaid, to purposely and intentionally place and cause to be placed, each respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney and other persons whose names are, as aforesaid, to the grand jurors unknown.

Second, and also by causing each of said precinct election boards to accept and receive said illegal votes, and to make an untrue, incorrect and inaccurate count and return of the votes cast at said election by including said illegal votes in said count and return.

That in pursuance of said conspiracy and to effect the object thereof the defendants injured the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, George Hodges and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, and other persons whose names are to the grand jurors unknown, to be cast and counted at said election and caused the election

6 boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect and inaccurate count and return of the votes cast at said election by including said illegal votes in said count and return.

That the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ofiias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges were candidates for presidential electors at said election and their names appeared on the ballots to be voted thereat; that neither was a Senator or Representative, or person holding office of trust or profit under the United States on said day or at any time within two years immediately prior thereto; that neither has ever engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that each were at said time, and have been for more than five years immediately prior thereto, a bona fide resident of the State of Ohio; that each on said day was twenty-five years old or upwards, and was at said time a male citizen of the United States and each was a resident voter of a ward and precinct within the State of Ohio, in which wards and precincts they had respectively resided for more than thirty days immediately prior to said election; that each was a qualified voter and entitled to vote at said election; that each possessed all the qualifications required by law for presidential electors, including the qualifications above set out; that the names of each appeared upon the ballot to be voted for at said election.

7 And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, confederation and agreement, the said Edward Bathgate, Matthew Peacock, John Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, William Haney, and other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate and agree together to injure, oppress, threaten and intimidate a certain citizen of the United States, to wit, Atlee Pomerene, in the free exercise and enjoyment of certain rights and privileges secured to him by the Constitution and laws of the United States, to wit:

First, of being a candidate for United States Senator from the State of Ohio at said election.

Second, of having qualified electors appear at the polls and vote at said election for United States Senator.

Third, of having only qualified voters vote at said election for United States Senator.

Fourth, of having only the votes of qualified voters, cast, accepted, received and returned at said election for United States Senator.

Fifth, of having his election or rejection decided and determined by voters who have not been bribed and by votes which have not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct and accurate count and return of the legal, and only the legal votes cast by the qualified voters for United States Senator.

(First), by then and there bribing a large number of otherwise qualified voters at said election and promising in advance of their voting sums of money to vote against the said Atlee Pomerene, and to vote for an opponent of said Atlee Pomerene, and by causing the said voters so bribed as aforesaid to purposely and intentionally
8 place and caused to be placed, each respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, and other persons whose names are to the grand jurors unknown; and also

(Second), by causing each of said precinct election boards to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy, and to effect the object thereof, the defendants feloniously injured the said Atlee Pomerene and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards in the various precincts of said congressional districts to accept and receive said illegal votes and to make an untrue, incorrect and inaccurate count and return of the votes cast at said election, by including said illegal votes in said count and return.

That *that* said Atlee Pomerene was a candidate for United States Senator, from the State of Ohio at the said election; that his name appeared upon the ballots to be voted for at said election for said office.

That on said day the said Atlee Pomerene was more than thirty years of age, and was, and for more than nine years past has been a citizen of the United States and a resident and inhabitant of the State of Ohio and of the city of Canton, in the county of Stark, and of the second ward of said city, and that he was then and therefore duly registered and entitled to vote therein accordingly to the requirements of law; that he had never engaged in insurrection
9 or rebellion against the United States, or given aid or comfort to the enemies thereof, and that he possessed all the qualifications required by law for United States Senator, including the qualifications above set forth.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement, that the said and said other persons, whose

names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree to injure, oppress, threaten, and intimidate a certain citizen of the United States, to wit, Edward H. Brink, in the free exercise and enjoyment of rights and privileges secured to him by the Constitution and laws of the United States, to wit:

First, of being a candidate for Representative in Congress for the first congressional district of the State of Ohio at said election.

Second, of having qualified voters appear at the polls and vote at said election for Representative in Congress from said district.

Third, of having only qualified voters vote at said election for Representative in Congress from said district.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for Representative in Congress from said district.

Fifth, of having his election or rejection decided and determined by voters who have not been bribed, and by votes which have not been purchased.

Sixth, of having each of the precinct election boards at said election, make a true, correct, and accurate count and return of the legal, and only the legal votes cast by qualified voters for Representatives in Congress in said congressional district.

(First), by then and there bribing a large number of otherwise qualified voters at said election, and promising them, in advance of their voting, sums of money to vote against the said Edward H. Brink, and in favor of an opponent, and by causing the said voters so bribed and promised, as aforesaid, to purposely and intentionally, place, and cause to be placed, each respectively, his own vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, and other persons whose names are to the grand jurors unknown; and also,

(Second), by causing each of said precinct election boards to accept and receive illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy, and to effect the object thereof, the defendants feloniously injured the said Edward H. Brink, in the manner so planned as aforesaid, and bribed a large number of otherwise qualified voters, and caused the said illegal and wrongful votes of Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, to be cast and counted at said election; and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and

return of the votes cast at said election, by including said illegal votes in said count and return.

That the said Edward H. Brink was a candidate for a Member of the House of Representatives in the Congress of the United States of America in the first congressional district of the State of Ohio at said election; that his name appeared upon the ballots to be voted for at said election for said office; that on said election day,
11 the said Edward H. Brink was more than twenty-five years of age, and was, and for more than seven years immediately prior thereto had been, a citizen of the United States and a resident and inhabitant of the State of Ohio and of the city of Norwood, in the county of Hamilton, and of the second ward of said city and that he was then and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never been engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof, and he possessed all the other qualifications required by law for a Member of the House of Representatives of the United States of America, including the qualifications above set forth.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present, that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation and agreement, the said Edward Bathgate, Matthew Peacock, John Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, William Haney, and said other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress and threaten and intimidate certain citizens of the United States, to-wit, each and all of the qualified electors who might actually vote at said election, in each of the voting precincts of the said first congressional district, and each and all of the qualified electors at said election in each of the voting precincts of the State of Ohio, and that said qualified electors cannot now, and could not ever, all to be to the grand jurors identified each by his individual name, and such of said electors as can or could be so identified are too numerous to list by name in this indictment, without unreasonably lengthening the same, and are
12 so numerous as that it would require an unreasonable prolongation of the investigations by this grand jury to so identify them, in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States, to-wit:

First. The right to have the votes and ballots for presidential electors, United States Senators and Representatives in said congressional district cast in their respective precincts at said election confined to the votes and ballots of legal and qualified voters of said precincts.

Second. The right to have the votes and ballots cast and counted at said election in said precincts for presidential electors, United States Senators and Representatives in Congress from said congressional district confined to those cast by electors who had not been bribed and who had not sold their votes.

Third. The right to have each lawful vote and ballot for presidential electors, United States Senators and Representatives in Congress at said election counted to its full strength uneffected and unimpaired by the casting of votes in the said precincts by men who had been bribed and accepted money therefor, and by the counting of said votes or any thereof.

Fourth. The right to have the election boards in said election precincts accept and receive only lawful votes cast thereat, and to make a true, correct and accurate count and return covering only the lawful votes cast by qualified voters for presidential electors, United States Senators and Representatives in Congress from said district, by then and there bribing a large number of otherwise qualified voters at said election, and promising them in advance of their voting sums of money to vote and cast their ballots in said pre-
13 cincts at said election for presidential electors, United States Senator and Representative in Congress, from said congressional district and by causing the election boards in said precincts to accept and receive said illegal votes and make an untrue, incorrect, and inaccurate count and return of the votes cast at *at* said election, by including said illegal votes in such count and return, which men so bribed and purchased included Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney and other persons whose names are to the grand jurors unknown.

That in pursuance of said conspiracy, and to effect the object thereof, the defendants injured each and all of the qualified electors aforesaid; and as so planned, bribed and purchased the votes of otherwise qualified voters at said election, to wit: Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, and other persons, whose names are to the grand jurors unknown, and promised and agreed, in advance of their voting to pay them money therefor, and caused them to vote and cast their ballots in said precincts for presidential electors, United States Senator and Representative in Congress from said district and caused the election boards in said precincts to accept and receive illegal votes and to make an untrue, incorrect and inaccurate count and return of the votes cast at said election by including said illegal votes in said count and return.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Second Count—Section 19, Penal Code.—And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further

14 present that, on the seventh day of November, 1916, a general election was held in the State of Ohio, under the laws thereof, and under the laws of the United States, for the election, among others, of twenty-four presidential electors and a United States Senator for said State, and of a Representative in the Congress of the United States from the first congressional district of said State, which said congressional district then included a part of Hamilton County in said State.

That at the said election James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank E. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, among others, were candidates for presidential electors, and Atlee Pomerene, among others, was a candidate for United States Senator, and Edward H. Brink, among others, was a candidate for Representative in the Congress of the United States for the said congressional district.

That each and all of the said candidates for presidential electors and for the office of the United States Senator and for the office for Representative in the Congress of the United States has been therefore regularly and lawfully chosen and nominated to be such candidates at a primary election next preceding the general election and held under the laws of the State of Ohio.

That at the time when each and all of said candidates were so chosen and nominated, and continuously thereafter until and including the said seventh day of November, 1916, each and every one thereof was duly qualified under the Constitution and laws of the United States and of the State of Ohio to be a candidate, each for the particular office for which he was chosen and nominated, and, likewise, duly qualified to hold such office.

15 And the grand jurous aforesaid, upon their oaths and affirmations aforesaid, do further present that Edward Bathgate, Matthew Peacock, John Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, each late of the said Hamilton County and of the said congressional district, and being hereinafter referred to as defendants, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including the said seventh day of November, 1916, at and within the said county of Hamilton, and at and within the said congressional district, in the Western Division of the Southern District of Ohio, each then and there well knowing all the premises aforesaid, unlawfully and feloniously did conspire, combine, confederate, and agree together, and with other persons to the said grand jurors unknown, to injure and oppress certain citizens of the said State and of the United States in the free exercise and

enjoyment of certain rights and privileges secured to them, respectively, by the Constitution and laws of the United States; that is to say, the right and privilege appertaining to said several candidates and to all legally qualified voters at said election voting in said congressional district (the latter forming a class of persons not capable of individual designation).

(First), of having none of such legally qualified voters unlawfully or fraudulently prevented from voting in said congressional district at said election for such candidates for presidential electors, United States Senator, and Representative as they chose to vote for.

(Second), of having only legal votes cast in said congressional district at said election for any candidate for presidential elector, United States Senator, or Representative in the Congress of the United States, and accepted, received, counted, and returned
16 by the election boards of the said county; and

(Third), of having such election determined by votes not influenced by bribery, fraud, or the wrongful use of money.

And that a description of the means and methods whereby said citizens were to be injured and oppressed in the free exercise and enjoyment of their said rights and privileges by the said defendants is as follows, to wit:

Said defendants, in order fraudulently to favor certain other candidates for the said office at said election, to wit:

U. G. Danman, Edwin Jones, Max Burghiem, Geo. McG. Morris, Lyburn T. Palmer, David Oldham, Samuel a Rennolet, Newton P. Foster, John M. Mulford, Jacob W. Byers, Solon O. Richardson, John B. Lindsey, Barton Walters, Albert E. Sartain, Sol. M. Wolf, N. S. Everhard, Charles L. Casey, John A. Fouts, Wilson Bradrick, Avery C. Jones, Edward O. Whotney, Edward W. Horn, Harry L. Vail, and W. W. Hall as candidates for presidential electors; Myron T. Herrick, as candidate for United States Senator, and Nicholas Longworth, as candidate for Representative in the Congress of the United States and to secure the election of such other candidates, instead of the election of the candidates hereinbefore first named, without regard to the true preferences and choice of said legally qualified voters of said congressional district, unlawfully were to present, by force, intimidation and fraud, to be used and practiced upon them by said defendants, as many of the said legally qualified voters of said congressional district who were desirous of voting for the candidates first above mentioned, from voting at the said election for those candidates, as said defendants could prevent by those means; and were to procure, by bribery, payment, and promise
17 in advance of, or at the said election of, payment of money to them for so doing, others of said legally qualified voters, desirous of voting for the candidates first above mentioned, to vote at said election for said other candidates, instead of said candidates first above named, and thereby procuring the acceptance, receipt, counting and returning in due course of said election boards of said

congressional district, of such illegal votes and of such votes so influenced by bribery, fraud, and improper use of money as aforesaid.

And so the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do say that Edward Bathgate, Matthew Peacock, John Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney throughout the period of time, at the place, and in manner and form aforesaid, unlawfully, and feloniously did conspire to injure and oppress citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States.

Against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

Third Count—Section 37, Penal Code.—The grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that Edward Bathgate, Matthew Peacock, John Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, together with other persons whose names are to the grand jurors unknown, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including the seventh day of November, 1916, in Hamilton County,
18 within the State of Ohio and within the Western Division of the Southern District of Ohio, and within the jurisdiction of the above entitled court, did feloniously conspire, combine, confederate and agree together, and with other persons whose names are to the grand jurors unknown, to defraud the United States of America, in the manner and for the purposes as follows:

First, by perverting and obstructing and corruptly administering and procuring to be corruptly administered, and maladministering and causing to be maladministered, and by committing and causing to be committed, wilful frauds upon each of the following sections of the Constitution of the United States and upon each of the following laws of the United States, to wit:

(a) Article 2, section 1, of the Constitution of the United States providing for the election of the President and Vice President of the United States.

(b) The twelfth amendment to said Constitution providing for the election of President and Vice President of the United States.

(c) The seventeenth amendment to said Constitution providing for the election of Senators by direct vote.

(d) Article 1, section 2, of said Constitution, providing for the election of Representatives in the Congress, of the United States of America.

(e) Article 1, section 4, of said Constitution, providing for the time, place, and manner of holding elections for Senators and Representatives of the United States.

(f) An act of the Congress of the United States entitled "An act providing a temporary method of conducting the nomination and election of the United States Senators," approved June 4th, 1914.

Second. By denying to and preventing the enjoyment of the United States of America of certain governmental rights and functions to it then and there belonging, namely:

(a) The right and function to have the election of candidates for presidential electors, United States Senators and Representatives in the Congress of the United States of America, determined by the votes of voters who have not been bribed.

(b) The right and function to have the election boards accept, receive, count and return the legal and only the legal, votes cast by qualified voters for presidential electors, United States Senators, and Representatives in the Congress of the United States.

(c) The right and function to have all qualified voters vote for presidential electors, United States Senators, and Representatives in the Congress of the United States without unlawful interference and without intimidation.

Third, by obtaining from the governor of the State of Ohio a certificate of election, sealed with the seal of, and attested by the secretary of the State, of said State, certifying that at the general election held on Tuesday, November seventh, A. D. nineteen hundred and sixteen, at which presidential electors and a United States Senator for the State of Ohio, and a Representative in the Congress of the United States for the first congressional district of the State of Ohio, were voted for, chosen and elected, one Nicholas Longworth, whom they intended as a part of said conspiracy to elect by fraud and illegality, and contrary to the laws of said State of Ohio, and the Constitution and laws of the United States in the manner hereinafter set out, was regularly elected a Representative in the Congress of the United States from the first congressional district in said State at said election and in accordance with the laws of said State and the Constitution and laws of the United States of America; and by causing said Nicholas Longworth to present said certificate of election to the House of Representatives of the United States of America, and to the Clerk of the last preceding House of Representatives of the United States of America, before the first meeting of the Sixty-Fourth Congress of the United States, in order that the said Nicholas Longworth should have his name placed on the roll of the Representatives elected in said body.

Fourth, by forcing upon the United States of America and upon the House of Representatives of the Congress thereof, as a duly elected member of said House of Representatives, the said Nicholas Longworth, and thereby securing for him, the said Nicholas Longworth, the privileges, immunities, and emoluments of a member of the said House of Representatives including the statutory pay of seventy-five hundred dollars per annum, provided by law as the

compensation for the yearly service of any duly elected member of said House of Representatives.

Fifth, by voting and causing to be voted for candidates for presidential electors and for candidates for United Senators and for a candidate for Representative in Congress at said election, in the various election precincts of the first congressional district, Hamilton County, in the State of Ohio, a large number of persons to be thereafter chosen by the said defendants, or did not or would not then have or possess the qualifications for electors required by the seventeenth amendment, and by article 1, section 2, of the Constitution of the United States of America and by the laws of the State of Ohio governing the qualifications electors at said election, with full knowledge upon the part of said defendants, and each of them, that the said persons, so the be voted, and caused to be voted, as aforesaid, did not or would not then have or possess the requisite qualifications for electors at said election.

Sixth, by corruptly purchasing and debauching the said election by bribing and buying any men, they the said defendants, could bribe and buy, which said men so to be bought, bribed and
21 purchased were to be chosen and selected by said defendants in the various precincts of the first congressional district of said Hamilton County, and by procuring said men to sell their votes therein for presidential electors, United States Senators and said Representative in Congress, and by causing such men when so bought, bribed, and purchased to vote in said county for presidential electors, United States Senator and said *and said* Representative in Congress, and by causing such men when so bought, bribed and purchased to vote in said county for presidential electors, United States Senator, and said Representative in Congress.

Seventh, by causing the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect and inaccurate return of the votes cast therein by including said illegal votes in said count and return.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterward, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of and in execution of and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid, said John Toker procured the said defendant, Alfred Purcell, a registered voter in precinct H of the eighteenth ward of the city of Cincinnati and in the first congressional district of Ohio to vote the straight Republican ticket at said election, and then and there and at the same time instructed the said Alfred Purcell how to mark his ballot to vote said Republican ticket; and that the said defendant, John Toker, then and there and at the same time instructed and promised the said defendant, Alfred Purcell, that after he had voted in accordance

with said instructions he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of
22 said conspiracy said defendant, Alfred Purcell, marked his ballot so to vote the straight Republican ticket and so cast the same; and after having cast the said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy, and immediately after he had voted in accordance with said instructions and agreement, the said Alfred Purcell met the said defendant, John Toker, in close proximity to the voting place in said ward and precinct, and then and there in accordance with said agreement and in furtherance of said conspiracy and to effect the object thereof, the said John Toker paid the said defendant, Alfred Purcell, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterward, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of and in execution of and for the purpose of said conspiracy, combination, confederation, and agreement aforesaid, said Matthew Peacock procured the said defendant, William Haney, a registered voter in precinct H of the eighteenth ward of the city of Cincinnati and in the first congressional district of Ohio to vote the straight Republican ticket at said election, and then and there and at the same time instructed the said William Haney how to mark his ballot to vote said Republican ticket; and that the said defendant, Matthew Peacock, then and there and at the same time instructed and promised the said defendant, William Haney, that after he had voted in accordance with said instructions he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of said conspiracy said defendant, William Haney, marked his ballot so as to vote the straight Republican ticket and so cast the same; and after having cast the said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted
23 in accordance with said instructions and agreement the said William Haney met the said defendant, Matthew Peacock, in close proximity to the voting place in said ward and precinct, and then and there in accordance with said agreement and in furtherance of said conspiracy and to effect the object thereof the said Matthew Peacock paid the said defendant, William Haney, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterward, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of and in execution of and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation and agreement aforesaid, said Matthew Peacock procured the said defendant, Charles Lewis Finch, a registered voter in pre-

cinct H of the eighteenth ward of the city of Cincinnati and in the first congressional district of Ohio to vote the straight Republican ticket at said election, and then and there and at the same time instructed the said Charles Lewis Finch how to mark his ballot to vote said Republican ticket; and that the said defendant, Matthew Peacock, then and there and at the same time instructed and promised the said defendant, Charles Lewis Finch, that after he had voted in accordance with said instructions he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of said conspiracy said defendant, Charles Lewis Finch, marked his ballot so as to vote the straight Republican ticket and so cast the same; and after having cast the said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted in accordance with said instructions, the said Charles Lewis Finch met the said defendant, Matthew Peacock, in close proximity to the voting place in
24 said ward and precinct, and then and there in accordance with said agreement and in furtherance of said conspiracy and to effect the object thereof the said Matthew Peacock paid the said defendant, Charles Lewis Finch, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterward, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of and in execution of and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid, said Matthew Peacock procured the said defendant, Jacob Diesenhofer, a registered voter in precinct H of the eighteenth ward of the city of Cincinnati and in the first congressional district of Ohio to vote the straight Republican ticket at said election, and then and there and at the same time instructed the said Jacob Diesenhofer how to mark his ballot to vote said Republican ticket; and that the said defendant, Matthew Peacock, then and there and at the same time instructed and promised the said defendant, Jacob Diesenhofer, that after he had voted in accordance with said instructions he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of said conspiracy said defendant, Jacob Diesenhofer, marked his ballot so as to vote the straight Republican ticket and so cast the same; and after having cast the said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted in accordance with said instructions and agreement, the said Jacob Diesenhofer, met the said defendant, Matthew Peacock, in close proximity to the voting place in said ward and precinct and then and there in accordance with said agreement
25 and in furtherance of said conspiracy and to effect the object thereof the said Matthew Peacock paid the said defendant, Jacob Diesenhofer, the sum of one dollar.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

STUART R. BOLIN,
United States Attorney.

(Endorsement:) Indictment. Violations of sections 19 and 37, Penal Code. A true bill. J. L. Clark, foreman.

26 And afterwards, to wit, on the 22nd day of May, A. D. 1917, came the defendants, Edward Bathgate, Matthew Peacock, and John Toker, by their attorneys and filed in the clerk's office of the court aforesaid a certain demurrer in this cause, which said demurrer is clothed in the words and figures following, to wit:

Demurrer.

In the District Court of the United States of America for the Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
EDWARD BATHGATE, MATTHEW PEACOCK, and JOHN TOKER, defendants.
No. 1136.

Demurrer of Edward Bathgate, Matthew Peacock, and John Toker to the indictment.

Now come the defendants, Edward Bathgate, Matthew Peacock, and John Toker, and demur to the indictment herein and to each and every count thereof for the reason that the said indictment and the several counts thereof do not state facts sufficient to charge offenses against the laws of the United States of America.

Defendants further demur to each of the several counts hereof by reason of defects apparent therein, the particulars of said defects in said counts being as follows, to wit:

First and second counts.

Defendants demur to the first and second counts of said indictment for the reason that the same do not state facts sufficient to charge an offense against the laws of the United States of America in the following particulars, to wit:

First. Because it appears from the allegations of said count that the various rights and privileges therein set forth alleged to be the rights and privileges of James E. Campbell and other alleged candidates for presidential electors, Atlee Pomerene, alleged candidate for Senator of the United States from the State of Ohio, Edward Brink, alleged candidate for Member of the House of Representatives of the United States from the State of Ohio, and all of the
27 qualified electors in each of the voting precincts of the first congressional district of the State of Ohio, and each and all

of the qualified electors in each of the voting precincts of the State of Ohio, are not secured to them or either of them by the Constitution or laws of the United States.

Second. Because it does not appear from the allegations of said counts that James E. Campbell and other alleged candidates for presidential electors, Atlee Pomerene, alleged candidate for Senator of the United States from the State of Ohio, Edward Brink, alleged candidate for Member of the House of Representatives of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the State of Ohio, and each and all of the qualified electors in each of the voting precincts of the State of Ohio could have been injured, oppressed, threatened, or intimidated in the free exercise and enjoyment of any right or privilege secured to them or either of them by the Constitution or laws of the United States by reason of said alleged conspiracy.

Third. Because said counts fail to set forth any offense committed against the laws of the United States, but the offense sought to be alleged therein, if any is so described, was an offense against the laws of the State of Ohio.

Fourth. Because the said counts and each of them show that this court has no jurisdiction to try and punish the alleged offenses therein described.

Fifth. Because in other particulars said counts and each of them fail to describe any offense against the laws of the United States.

Third count.

28 Defendants demur to the third count of said indictment for the reason that the same does not state sufficient to charge an offense against the laws of the United States of America in the following particulars, to wit:

First. Because the allegations of said count do not describe a conspiracy either to commit an offense punishable by the laws of the United States or to defraud the United States in any manner or for any purpose.

Second. Because the offense therein set forth, if the same be an offense, is not an offense against the United States, but against the State of Ohio.

Third. Because the United States can not be defrauded in any manner or for any purpose by the alleged conspiracy of the defendants as set forth in said count.

Fourth. Because the United States can not be defrauded in any manner or for any purpose by any of the alleged purposes of the defendants alleged to have been the results to be attained by said conspiracy.

Fifth. Because the alleged overt acts described in said counts could not in any manner or for any purpose defraud or tend to defraud the United States.

Sixth. Because in other particulars said count fails to describe any offense against the laws of the United States.

SHERMAN T. MCPHERSON,
JOHN R. HOLMES,
FROOME MORRIS,
M. MULLER,
Attorneys for Defendants.

29 And afterwards, to wit, on the 22nd day of May, A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to wit:

Entry—12-332.

District Court of the United States of America, Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* EDWARD BATHGATE ET AL., DEFENDANTS.	Entry. No. 1136.

This day this cause came on to be heard on the indictment and the demurrer thereto, and being argued by counsel, and the court being fully advised in the premises, finds it has no jurisdiction of the matters and things charged in said indictment, and it is therefore ordered, adjudged, and decreed that said demurrer be and it is hereby sustained, and the defendants, and each of them be and they are hereby discharged from further attendance upon this court, to all of which the United States by its counsel excepts.

And afterwards, to wit, on the 19th day of June, A. D. 1917, the following petition for writ of error was filed in the clerk's office of said court:

30 Petition for writ of error.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *v.* EDWARD BATHGATE, MATTHEW PEACOCK, John Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, defendants.	Petition for writ of error. No. 1136.

Now comes the United States of America, plaintiff herein, and says that on or about the twenty-second day of May, 1917, this court entered a judgment herein against the plaintiff and in favor of the

defendants, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignments of error which is filed with this petition.

Wherefore the United States of America, plaintiff herein, prays that a writ of error may issue in its behalf to the Supreme Court of the United States for the correction of the errors so complained of and that a transcript of the record of the proceedings and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

Assignment of errors.

And afterwards, to wit, on the 19th day of June, A. D. 1917, the following assignment of errors was filed in the clerk's office of said court:

United States District Court, Southern District of Ohio, Western Division. No. 1136. Assignment of errors.

31 THE UNITED STATES OF AMERICA, plaintiff,
v.
EDWARD BATHGATE, MATTHEW PEACOCK, JOHN Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, defendants. } No. 1136. Assignments of errors.

The plaintiff in this action, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers were committed upon the trial of this cause, to wit:

I. The court erred in its decision and judgment sustaining the demurrer to the indictment and each count thereof.

II. (a) The court erred in its decision and judgment sustaining the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment sustaining the demurrer to the second count of said indictment.

III. (a) The court erred in its construction of the statute upon which the first count of said indictment was based, and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said first count of said indictment.

(b) The court erred in its construction of the statute upon which the second count of said indictment was based, and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said second count of said indictment.

IV. (a) The court erred in its decision and judgment
32 in not overruling the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment in not overruling the demurrer to the second count of said indictment.

V. The court erred in its decision and judgment in not overruling the demurrer to said indictment and to each count thereof.

For these reasons the plaintiff, the United States of America, asks that this case be reviewed and that such judgment be rendered in the Supreme Court of the United States as should have been rendered in the court below, and that such action be taken as will protect the rights of the plaintiff in the premises.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

And afterwards, to wit, on the 19th day of June, A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to wit:

Entry—12–354.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *v.* EDWARD BATHGATE, MATTHEW PEACOCK, JOHN Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch and William Haney, defendants.	Entry. No. 1136.

Now comes the United States attorney on behalf of the plaintiff and presents for allowance a petition for a writ of error and assignments of error accompanying same, upon consideration of which the court hereby allows said petition and orders a writ of
33 error to the Supreme Court of the United States.

HOLLISTER,
United States District Judge, S. D. O.

34 And afterwards, to wit, on the 27th day of June, A. D. 1917, the following stipulation was filed in the clerk's office of said court:

Stipulation.

United States District Court, Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* EDWARD BATHGATE, MATTHEW PEACOCK, JOHN TOKER, JACOB DIESENHOFER, HARRY OETTING, JOSEPH A. HUGHES, RICHARD KAUFMAN, ALFRED PURCELL, JOSEPH CHAMBERS, CHARLES LEWIS FINCH AND WILLIAM HANEY, DEFENDANTS.	No. 1136.

Stipulation.

It is hereby agreed and stipulated that the record in this cause, so far as the undersigned are concerned, shall consist of the following: Indictment, demurrer to indictment, opinion of court on demurrer, order sustaining demurrer, petition for writ of error, assignments of error, and order allowing writ.

The clerk is therefore requested to prepare a transcript of the foregoing pleadings and papers to be filed in the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
By STUART R. BOLIN,
United States Attorney.
Per JAMES R. CLARK,
Assistant U. S. Attorney.
EDWARD A. BATHGATE,
JOHN TOKER, and
MATTHEW PEACOCK,
By JOHN R. HOLMES,
SHERMAN T. MCPHERSON,
FROOME MORRIS,
M. MULLER.

35 District Court of the United States, Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* EDWARD BATHGATE ET AL., DEFENDANTS.	No. 1136.
UNITED STATES OF AMERICA, PLAINTIFF, *vs.* JOHN J. BURCKHAUSER ET AL., DEFENDANTS.	No. 1137.
UNITED STATES OF AMERICA, PLAINTIFF, *vs.* HARRY COONS ET AL., DEFENDANTS.	No. 1138.
THE UNITED STATES OF AMERICA, PLAINTIFF, *vs.* WILLIAM FARRELL ET AL., DEFENDANTS.	No. 1139.
UNITED STATES OF AMERICA, PLAINTIFF, *vs.* OSCAR KLAYER ET AL., DEFENDANTS.	No. 1140.
UNITED STATES OF AMERICA, PLAINTIFF, *vs.* ROBERT URICHO ET AL., DEFENDANTS.	No. 1141.

36 Opinion on rehearing of the demurrers and motions to quash.

Immediately after the close of the argument at the first hearing of the demurrers the court overruled them, impelled to that action by a decision in a neighboring district by a judge of wide experience, including cases involving election frauds, and by what then seemed and still is urged by counsel for the United States to be and inevitable deduction from the decision of the Supreme Court of the United States in what is known as the Mosley Case, 238 U. S. 383.

The ultimate conclusion in that case was that since a citizen of a State has the right under the Constitution and laws of the United States to vote it necessarily follows that he has the right to have his vote counted, and it was therefore an offense against that right under section 19 of the Criminal Code for two of the three members of a State election board to make their returns omitting the returns of the precinct in which he had voted at an election for a Member of Congress. Section 19 reads:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall moreover be thereafter ineligible to any office or place of

honor, profit, or trust created by the Constitution or laws of the United States."

The argument was, and is, that a citizen has rights secured by the Constitution and laws of the United States, although not expressly defined, but which by necessary implication are as effectually declared as if specifically described. The defendants do not and can not deny that the principle is firmly established by decisions of the Supreme Court, and the most important question now involved is
37 whether or not, notwithstanding the logical inference to be drawn from the Mosley case, there is a clearly ascertainable intention on the part of Congress applicable to section 19, with respect to the conduct of elections for presidential electors, for Senators, and for Members of the House of Representatives, to suspend Congress' own power over the subject and to commit the conduct of such elections to the States under the election laws established by them.

The defendants' counsel do not deny the power of Congress to enact a system of laws under which such elections must then be held, including the definition of offenses against them, and providing for punishment. On the contrary, their argument is based on the existence of the power, but the denial of its exercise through the enactment of section 19. Their showing at the bar and in a brief of great learning and research of the inapplicability of section 19 to counts 1 and 2 of the indictments, was directed also to the third count of the indictments based on section 37 of the Criminal Code, which reads:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both."

Shortly after the opinion was announced at the close of the first hearing, the Supreme Court in a series of cases (Nos. 683, 684, 775 and 776), which have been called in argument the "Gradwell Case," decided April 9, 1917, that a conspiracy to commit bribery at elections in which a candidate for Representative in Congress was voted for, was not, under section 37, a conspiracy to commit any offense against, or to defraud, the United States or a candidate for Congress in any manner or for any purpose. A rehearing of these motions and demurrers was then had and they are now reconsidered.

The opinion in that case was by Mr. Justice Clarke, who
38 noted the significance of the inclusion of section 37 under the title in the statutes, "Crimes against operations of the Government," as distinguished from offenses included under the title, "Crimes against the elective franchise and civil rights of citizens," and referred to the decisions holding that there are no common law offenses against the United States and that no man can be punished as a criminal under the laws of the United States unless his case is "plainly and unmistakably" within the provision of some statute.

These considerations were given weight in that opinion in reaching the conclusion that it was not the intention of Congress by section 37 to make it a crime against the United States or against a candidate for Congress for persons to conspire to corrupt by bribery a State election at which candidates for Congress were voted for. The question was not "that the people of the United States and so their Government, considered as a political entity," have no interest in and a right to honest and fair elections; but, admitting the right, whether section 37 "was enacted to protect that right and whether a conspiracy to bribe voters was a violation of it." The decision was that the section was not enacted for any such purpose, and the decision included also the right of a candidate for Congress. The chief reason for the conclusion was, however, that the policy of Congress for its entire constitutional life, with the exception of a comparatively few years during the reconstruction period in the South, had been and now is, "to leave the conduct of the election of its members to State laws, administered by State officers, and that whenever it has assumed to regulate such elections it has done so by positive and clear statutes, such as were enacted in 1870." Those statutes, repealed in 1894, included bribery at the elections of Representatives in Congress. The learned justice quoted from the reply of Madison to Monroe in the debates at the Virginia convention:

39 "It was found impossible to fix the time, place and manner of election of Representatives in the Constitution. It was found necessary to leave the regulation of these, in the first place, to the State governments as being best acquainted with the situation of the people, subject to the control of the General Government, in order to enable it to produce uniformity and prevent its own dissolution. * * * Were they exclusively under the control of the State governments, the General Government might easily be dissolved. But if they be regulated properly by the State legislatures the Congressional control will probably never be exercised. The power appears to me satisfactory, and as unlikely to be abused as any part of the Constitution."

And from the views to the same effect of Hamilton in Essay No. LIX of the Federalist. Mr. Justice Clarke said, in the conclusion to that part of the opinion dealing with section 37—

"that to bribe voters to vote at such an election is not such a fraud upon the United States or upon candidates or the laws of Rhode Island as falls within either the terms or purposes of the section."

The indictments under consideration here are founded, as to their first and second counts, upon section 19, but as to their third count upon section 37, and charge in the first two counts—which, for the purposes of this case, may be considered together—a conspiracy to injure the individuals named to be candidates respectively for presidential electors, Senator of the United States and Representative in the Congress, as well as the voters in the first judicial dis-

trict of Ohio, in the free exercise of their right to have an election held under the laws of Ohio free from bribery.

Inasmuch as the Supreme Court have held that a conspiracy under section 37 to commit bribery at a State election for Representatives to Congress is not a conspiracy to commit any offense against or to defraud, the people of the United States and so their Government considered as a political entity, or candidates for Congress, the demurrers to the third count of the indictments under consideration must necessarily be sustained.

So much counsel for the Government concedes, but insists
40 that section 19, dealing as it does with the civil rights of the individual citizen and candidates as distinguished from offenses against the people and so their Government, as a political entity, makes a conspiracy to injure those individual rights by means of bribery at elections a crime, although a conspiracy under section 37 to commit an offense against or defraud the United States or its people, or candidates for Congress, by means of bribery at elections is not a crime. The argument is that the crime described by section 19 is not a conspiracy to injure, etc., by any specified means, whether criminal under any law of the United States or of a State, or not; but is a conspiracy to injure the citizen in the free exercise or enjoyment of a right or privilege secured to him by the Constitution and laws of the United States, by whatsoever means the conspiracy contemplated to bring that end about.

Hence it is, counsel say, that although Congress repealed in 1894 the act of 1870, making bribery at congressional elections a crime, nevertheless since such conduct as that of the conspiring election officers in the Mosley case to throw out the entire vote of eleven precincts was included in the repeal of the act of 1870 making such conduct unlawful, that the repeal of the law making bribery at Congressional elections unlawful, cannot be regarded as a test or indication of Congressional intention as expressed in section 19, and they cite the Mosley case as conclusive of the matter.

The defendants' counsel say that this, by judicial construction, makes conduct criminal under the laws of the United States which, as declared in the Gradwell case, the policy of Congress in almost the whole of its constitutional life has been, and is, to commit to the States until such times as Congress, in the exercise of its undoubted power, should enact laws under which condidates for Congress, Senators and presidential electors shall be elected.

Defendants' counsel say, and truly, that we are not concerned
41 in this discussion with any moral question or right, and however abhorrent the conduct described in the indictments may be, if the charges are true; yet it is not a crime against the United States unless made so by section 19 beyond a reasonable doubt. Erbaugh v. United States, 173 Fed., 433, 435; Field v. United States, 137 Fed., 6, 8. And it is undoubtedly true that judicial construction ex post facto is as objectionable as ex post facto statute law. Harri-

son v. United States, 200 Fed., 662, 667 (C. C. A. 6); Erbaugh v. United States, 173 Fed., 433, 435 (C. C. A. 8).

It cannot be denied that offenses not directly made unlawful by any express law of the United States have nevertheless been held to be within the meaning of section 19 when the conduct complained of was a conspiracy to injure an expressly conferred right. Such was the case of United States v. Waddell, 112 U. S. 76. There one Lindsey, a citizen of the United States, made, under the homestead laws, an entry on a quarter section of land, and while residing on and cultivating the land for the purpose of perfecting his right to the same under the laws, the defendants drove him off by violence. The acts of violence were of course assaults, which, as such, were not offenses under any law of the United States; but the right of the homesteader to perfect his title was dependent upon the laws of the United States under which he was seeking to obtain the homestead granted to him on certain conditions, among which were living upon and cultivating the land for a period of five years. In that case the right was dependent upon a right expressly conferred. But the right itself may be implied and the act in contravention of its free exercise may also be implied from that right.

That situation is presented by United States v. Mosley, the case upon which counsel for the Government place their chief reliance. It was there said by Mr. Justice Holmes (238 U. S., 386):

42 "It is not open to question that this statute is constitutional, and constitutionally extends some protection at least to the right to vote for Members of Congress. Ex parte Yarbrough, 110 U. S., 651. Logan v. United States, 144 U. S., 263, 293. We regard it as equally unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box."

Then the learned justice refers to the "only matter that needs argument." The subject matter of that was, as shown in the opinion of the majority and the dissenting opinion of Mr. Justice Lamar, the congressional intention in repealing in 1894 the sections of the act of 1870 having to do with the regulation of elections of candidates for Congress, and especially in this connection the punishment of officers of election for making fraudulent returns. The argument in the opinion was that Congress, by leaving section 6 of the act (section 19) unrepealed and repealing the sections dealing with specific crimes in elections, intended to protect the citizen in the exercise of the suffrage against conspiracies to injure him in the free enjoyment of that right. It was said by Mr. Justice Holmes, after commenting on the source of the section and the doings of the Ku Klux and the violence attending their domination (387, 388):

"But this section dealt with Federal rights and with all Federal rights, and protected them in the lump, whereas section 4, Rev. Stat., section 5506, dealt only with elections. * * *

"But section 6 being devoted, as we have said, to the protection of all Federal rights, from conspiracies against them, naturally did

not confine itself to conspiracies contemplating violence, although under the influence of the conditions then existing it put that class in the front."

He then notes that the transposition of clauses in section 19, as it now reads and in section 6 as it was first enacted, is to be considered as a reflection of the congressional purpose to emphasize the right to protection from acts other than those involving personal violence, and that such overlapping as might seem to exist upon a consideration of section 4 and section 6, and the imposition of a less onerous penalty in the one than in the other, might have escaped attention when the original act was passed, "or if noticed have been approved, when we consider what must have been the respective emphasis in the mind of Congress when the two sections were passed."

43

The other line of argument was that ten sections of the act of 1870 under the title, "Crimes against the elective franchise and civil rights of citizens," arepealed in 1894, related to crimes by the voter and against the voter and every officer of an election, and that (389) "taken together it is perfectly evident that in them Congress intended to legislate comprehensively and exhaustively on the subject of 'crimes against the franchise'"; that under one or another of the repealed sections the conspiring majority of the county election board would have been subject to indictment for throwing out or not counting the votes of the eleven precincts had those sections not been repealed; that there was no overlapping, because the ten repealed sections might be properly described as crimes against the elective franchise, whereas section 6 more properly covered crimes against civil rights, and that, although the two subjects are dealt with in the same act, they were treated as distinct. Mr. Justice Lamar said further (390):

"Congress, having dealt so explicitly with offenses by State election officers in the ten repealed sections can not be supposed to have referred to them indirectly in section 5508, which does not mention voters or elections or election officers, but deals with the deprivation of civil rights of a different nature."

He then proceeds (390, 391) to show from the debates during the discussion of the repealing act of 1894 the view of Congress—

"that as elections were held under State laws, by State officers who were subject to punishment by the State for a violation of the election laws, they should not be subject to indictment in the United States courts. The express and avowed intent was to repeal all statutes which gave Federal courts jurisdiction over elections and over offenses committed by election officers. And to hold that while a single election officer is now immune from prosecution, two or more can be indicted under section 5508, gives an enlarged operation to the theory that an act, not in itself criminal, may be punished if committed by more than one. Such construction also injects section 5508 into a field from which it was excluded when passed in 1870 and into which it can not now be forced by implication. For under Penal Code

44 (section 399), section 5508 means now exactly what it did when it was originally enacted."

If in the discussion here emphasis seems to be given to a dissenting opinion it is because at the first argument on these demurrers much was made by counsel for the defendants of the apparent intention of Congress by the repeals of 1894, adopting, as far as it went, the view of Mr. Justice Lamar, and for the reason also that an appreciation of the opposing lines of argument may be helpful in determining whether or not this case can be distinguished in principle from the Mosley case, and if not, whether or not the reasoning in the opinion in the subsequent Gradwell case warrants the conclusion that as bribery at Federal elections was not considered in the Mosley case the principle there decided does not cover this case, into whatsoever uncertain fields the logic of the decision might seem to lead.

It can not escape notice, however, that neither in the opinion written for the majority nor in the dissenting opinion in that case was any reference whatever made to what is the real basis for the unanimous opinion in the Gradwell case, the unmistakable policy of Congress to leave the conduct of elections of Members of Congress to the regulation of the States. The court instanced the enforcement act of 1870 as the only departure from that policy in the now many years of the Government's existence and that for a purpose well understood at the time of its enactment as well as at the time of its repeal.

Nor, as bearing on the intention of Congress in the enactment of section 19, can the significance of the fact be overlooked that until the Gradwell case no prosecution has ever been instituted in the courts of the United States, so far as this court is aware, to punish bribery at State elections for Members of Congress in the entire history of the United States.

45 Moreover, an analysis of the Mosley case shows the gravamen of the charge was not the injury to the voter through fraud affecting the result of the election. The injury to him was in not counting his vote, and the injury was to him alone, and for that reason only. It so happened that the votes in eleven precincts were not counted; but the principle would be the same if the officers had, by conspiring to that end, omitted to count one vote.

In the indictments under consideration, the right of the candidates to be candidates was not injured, and, so far as appears, the votes cast for them were counted; the right of voters to vote was not interferred with, and, so far as appears, their votes were counted. The gravamen of the charge involves an injury through the change in the result of the election brought about by bribery of voters. That result affected not only these candidates and all the voters in the first congressional district and all the voters in Ohio; but also the candidates for President and Vice President, and all the voters in the United States. The injury growing out of the result of the election was not dealt with in the Mosley case, and it may not be going too far to say that the exact point decided in

that case is not applicable to these indictments at all, and that these indictments are to be ruled by the Gradwell case, and not by the Mosley case.

The logic of the opinion in the latter case is impressive, and, if applicable to these indictments, is irrevocable so far as this court is concerned; but it cannot be said that the majority of the court and the learned justice who wrote the opinion intended to go any further than to decide the exact case before the court. This receives emphasis from the unanimous opinion of the court in the later case.

There the court, having held section 37 to be inapplicable to a conspiracy to commit an offense against, or to defraud the United
46 States, or a candidate, by bribery at a State election for a Member of Congress, proceeded to consider whether or not section 19 included a conspiracy to injure candidates for the nomination at a primary election held under State laws by procuring persons, not legal voters, to vote, and a number of them to vote more than once in favor of one of the candidates other than those alleged to be injured and oppressed. It was held that the section was inapplicable to primary elections and particularly to such elections held under the peculiar laws of West Virginia. One reason was that such primary elections were not in existence when section 19 was enacted; that the right of candidates for nomination for Senator to an uncorrupted primary election at which the final candidate is selected, cannot reasonably be said to be derived from the Constitution and laws of the United States, for they are derived wholly from the State law and nothing of the kind can be found in any Federal statute; and that—

"Even when Congress assumed, as we have seen, to provide an elaborate system of supervision over congressional elections no action was taken looking to the regulation of nominating caucuses or conventions, which were the nominating agencies in use at the time such laws were enacted;"

and that it was not for the courts, in the absence of congressional legislation regulating primary elections for the selection of a candidate for Senator—

"to attempt to supply it by stretching old statutes to new uses, to which they are not adapted and for which they were not intended. In his case, as in the others," (that is, the cases involving section 37) "we conclude that the section of the Criminal Code relied upon, originally enacted for the protection of the civil rights of the then lately enfranchised negro, cannot be extended so as to make it an agency for enforcing a State primary law, such as this one of West Virginia."

It may be assumed for the purposes of this case that candidates for presidential elector, Senator, and Congress, respectively, have a constitutional right to be candidates, which right and the free exercise of it come within the protection of section 19.

47 If, however, a candidate for these respective positions has such a right as that, under section 19, the Government of the United States may prosecute a conspiracy to injure it, or its free exercise, it would not be illogical to say that State primary election laws upon which depend the acquirement of the right, Congress having unquestionable power to enact laws for the conduct and control of primary elections held to elect such candidates, would be also within the meaning and compass of section 19. In the Gradwell case, however, the Supreme Court do not adopt logic as a test, but declare, as of course they must, that the test is the intention of Congress: that Congress did not intend, by the enactment of section 19 in 1870, to include infractions of State laws through the operation of which a citizen became a candidate for United States Senator.

Of the classes named in counts one and two whose rights are said to be affected by the alleged illegal acts complained of, are also all the voters in the first congressional district. It is said that logically the rights of these voters, as well as the rights of candidates include not only the free exercise of voting and the counting of their votes, but also an election free from the corruption of bribery, for otherwise their votes would not be effective. If logic were the test, the Government's position would be strong, but logic cannot prevail as against clear congressional intention, the latest declaration of which, as relating to elections, is found in the Gradwell case.

It is true that in dealing with section 19 in the opinion and decision of that case the court do not say that a conspiracy to deprive a citizen of a right under the Constitution or laws of the United States by an act made illegal by the election laws of a State, was not within the meaning of that section, for the decision is capable of an interpretation quite the contrary; but they do say that a conspiracy to defraud the United States by bribery at a Congres-
48 sional election does not involve any law of the United States, because the regulation and conduct of those elections have been committed to the States, and that an attempt to punish such a conspiracy by indictment by a Federal grand jury is futile, because the United States courts have no jurisdiction in the premises. Considering section 19 and the application sought for it in that case, Mr. Justice Clarke says:

"Here again, confessedly, an attempt is being made to make a new application of an old law to an old type of crime, for section 19 has been in force, in substance, since 1870. * * *

The old type of crime referred to was bribery in a State election for a Member of Congress.

If the right of the people of the United States and so their Government as a political entity, and the right of a candidate, to have an election for a Member of Congress free from a conspiracy to corrupt the election by bribery is not a right, the deprivation of which is made a crime under section 37, it necessarily follows that a conspiracy to injure the right of the voter and of the candidate

by bribery at a State election at which candidates for Federal positions are voted for, is not an offense under section 19, because the same reason would apply in construing section 19 as the Supreme Court have applied in construing section 37, since bribery at such elections is a matter which, by the policy of Congress has been committed to the States. It must be that the right of voters and candidates under section 19 to have an election free from bribery can rise no higher than the right of the people of the United States and candidates under section 37 to have an election free from bribery.

If a fallacy underlies this reasoning it results from the failure to appreciate such a difference between the right of the people and so their Government as a political entity, and the righ of candidates, when the indictment is drawn under section 37, and the right of the individual voter or individual candidate, when the in-
49 dictment is drawn under section 19, as would withdraw the offense in the one case from the jurisdiction of the courts of the United States, but leave the same act cognizable by those courts in the other, although in both the evil means contemplated by the conspiracy are exactly the same. If the difference, with such results, exists, this court is unable to see it. If the difference does exist, then the question whether or not a crime has been committed of which the Federal courts have jurisdiction depends solely upon how the indictment is framed. If it charges a conspiracy to defraud the United States or candidates by means of bribery at elections, under section 37, there is no crime against the United States, and the Federal courts have no jurisdiction. If it charges, under section 19, a conspiracy against the individual voter, or candidate, by means of bribry at elections, it charges an offense against the United States within the jurisdiction of the Federal courts. This cannot be. If it is the policy of Congress not to interfere with bribery at State elections for Members of Congress, the conclusion is inevitable that whatever means a conspiracy under section 19 contemplates, bribery at such State elections is not one of them.

While we may by construction, say first, a citizen has a right to vote, and, by construction from this, say, second, a voter has a right to have his vote counted, and, by construction from this, third, that, therefore, he has a right to an election free from bribery, we are still not far advanced toward the conclusion that section 19 was passed to protect the voter in the right to have an election free from bribery. It will not do, by successive deductions of this kind, to construe a man into the penitentiary however heinous his offense may be. There must be a plain and unmistakable congressional intention to make what he has done an offense against the United States before his act becomes a crime against the United States.
50 United States v. Lacher, 134 U. S., 624, 628; The Gradwell Case. Mr. Justice Clarke says:

"To admit, as it must be admitted, that the people of the United States and so their Government considered as a political entity,

have an interest in and a right to honest and fair elections advances us but little toward determining whether section 37 was enacted to protect that right and whether a conspiracy to bribe voters is a violation of it. Obviously the Government may have this right and yet not have enacted this law to protect it."

So it is with the right of the voter and the candidate to have honest and fair elections. To admit that he has the right advances us but little toward determining whether section 19 was enacted to protect that right and whether a conspiracy to bribe voters is a violation of it. Obviously the voter and the candidate may have this right and yet section 19 may not have been enacted to protect it.

It is here held that section 19 was not enacted to protect that right, because, as congressional legislation now stands, the States alone can deal with the subject. So far as the practical substance of trials under these indictments is concerned, the sole issue is whether or not the defendants were guilty of bribery at the last general election, and no subtle legal distinctions or refinements can make anything else out of it.

The conclusion is that this court has no jurisdiction in the premises.

This conclusion finds strong support in what was said by Mr. Justice Gray in Green's case, 134 U. S., 377, 380:

"Congress has never undertaken to interfere with the manner of appointing electors, or, where (according to the now general usage) the mode of appointment prescribed by the law of the State is election by the people, to regulate the conduct of such election, or to punish any fraud in voting for electors, but has left these matters to the control of the States."

It follows from what has been said that the demurrers will be sustained and the indictments will be dismissed.

In view of this conclusion it may, with propriety, be said
51 that if the charges made in the indictment are true, there was in the last general election wholesale bribery by saloonkeepers, members of the city council, and by many deputy officials in a number of the county and city offices, defendants to these indictments. Many of the poor creatures charged with selling their votes have pleaded guilty of having been bribed. They are now in custody and will be temporarily discharged therefrom pending the termination of proceedings to review this decision, should such proceedings be instituted by the district attorney in behalf of the Government; and they will be apprehended should this decision on review be reversed, otherwise not.

The grand jurors who found the indictments felt called upon to make a public statement of what they believed to be a serious condition of debauchery of our local elections. Since Congress has committed to the States the punishment of bribery at elections at which candidates for Federal positions are voted for, and the present responsibility for the purification of elections in this State rests with

the local authorities, it cannot be doubted that the Court of Common Pleas and the prosecuting attorney of Hamilton County, Ohio, will see to it that the charges made against these defendants by the Federal grand jury, and which failed of trial because the court had no jurisdiction to entertain them, will be investigated by a proper grand jury and punishment meted out to these defendants if they shall, after a trial, be found guilty.

One James Kerr, indicted with others, filed, upon leave first had, a supplementary motion to quash which he fortified by an affidavit, alleging facts, which, if true, showed duress by the district attorney, one of his assistants, and other officers in the employ of the United States, by violence and otherwise, and that he was called before the grand jury without being advised before testifying that any of his acts were under investigation by a United States officer or by the grand jury; that he was never warned by the district attorney
52 or his assistant or any other person that anything he said, either before them or before the grand jury, would or could be used against him for purposes of prosecution, and that the statements he did make to the district attorney and his assistants and other persons connected with the prosecution were made under such circumstances that he was led to believe he was compelled to make such statements and to testify before the grand jury under the laws of the United States.

No more need be said about this affidavit than that it was outrageously false.

Whatever Kerr said or did was entirely voluntary, and his affidavit in support of the motion was in all essentials absolutely refuted by his own testimony on the witness stand. If the demurrers to these indictments had been overruled, the court would have directed the grand jury to investigate Kerr's conduct, and to return an indictment against him for perjury if they thought the circumstances warranted his trial on that charge.

An order may be taken sustaining the demurrers and dismissing the indictments.

HOLLISTER, *District Judge.*

53 United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA,
vs.
EDWARD BATHGATE ET AL. } No. 1136.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

I, B. E. Dilley, clerk of the District Court of the United States within and for the district and division aforesaid, do hereby certify that the foregoing is a true and correct transcript of the opinion

of the court and of those portions of the record in the above-entitled cause, designated in the stipulation filed therein on June 27, 1917, as the same remain of record and on file in the office of the clerk of said court, and that the same constitutes the return to the annexed writ of error.

In witness whereof I have hereunto subscribed my name and affixed the seal of said court at the city of Cincinnati, Ohio, this 11th day of July, A. D. 1917.

[SEAL.] B. E. DILLEY, *Clerk.*
By HARRY F. RABE, *Deputy.*

54 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the District Court of the United States for the Southern District of Ohio, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, or some of you, between the United States of America, plaintiff, and Edward Bathgate, Matthew Peacock, John Toker, Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Haney, defendants, a manifest error hath happened, to the great damage of the said the United States of America, as by its complaint appears. We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.] B. E. DILLEY,
Clerk of the District Court of the United States for the Southern District of Ohio.
By HARRY F. RABE, *Deputy.*

Allowed by
H. C. HOLLISTER,
Judge of the District Court of the United States for the Southern District of Ohio.

(Indorsed:) Filed Jun. 19, 1917, B. E. Dilley, clerk.

55 UNITED STATES OF AMERICA, *ss:*

To Edward Bathgate, Matthew Peacock, John Toker, Jacob Diesenhofer, Harry Outting, Joseph A. Hughes, Richard Kaufman, Alfred Purcell, Joseph Chambers, Charles Lewis Finch, and William Hanel, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Southern District of Ohio, Western Division, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

H. C. HOLLISTER,
District Judge of the United States for the Southern District of Ohio.

56 On this 11th day of July, in the year of our Lord one thousand nine hundred and seventeen, personally appeared John F. Burns, deputy U. S. marshal, before me, the subscriber, Stephen H. Waters, notary public, Hamilton County, Ohio, and makes oath that he delivered a true copy of the within citation to Jacob Diesenhofer, Harry Oetting, Joseph A. Hughes, Richard Kaufman, Joseph Chambers, and Charles Lewis Finch.

M. DEVANNEY,
U. S. Marshal, S. D. O.,
JOHN F. BURNS, *Deputy.*

Sworn to and subscribed the 11th day of July, A. D. 1917.

[SEAL.]

STEPHEN H. WATERS,
Notary public, Hamilton County, Ohio.

(Indorsed:) Marshal's criminal docket No. 551. Rec'd July 6–17.

CINTI., OHIO, *June 23, 1917.*

We acknowledge service on the within citation as to Edward Bathgate, Matthew Peacock, and John Toker.

JOHN R. HOLMES,
SHERMAN T. MCPHERSON,
FROOME MORRIS,
M. MULLER,
Attys. for defts. above named.

Marshal's fees: 6 services, $12.00.

57 Supreme Court of the United States, October term, 1917.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
v.
EDWARD BATHGATE ET AL.

SAME
v.
JOHN J. BURCKHAUSER ET AL.

SAME
v.
HARRY COONS ET AL.

SAME
v.
WILLIAM FARRELL ET AL.

SAME
v.
OSCAR KLAYER ET AL.

SAME
v.
ROBERT URICHO ET AL.

Stipulation as to printing of the record.

It is stipulated by counsel for the parties to the above-entitled causes that in the printing of the transcripts of records therein the opinion of the court sustaining the demurrers to the indictments shall be omitted from each of the transcripts except in the case of United States, plaintiff in error, v. Edward Bathgate et al., with the right on the part of counsel to refer thereto as if it had been fully set out in each transcript.

JNO. W. DAVIS,
Solicitor General.
SHERMAN T. MCPHERSON,
FROOME MORRIS,
M. MULLER,
A. LEE BEATY,
Of Counsel for Defendants in Error.

July 18, 1917.

58 (Indorsed:) 575, &c—26042. Stip. to omit parts of record in printing. Office of the clerk, Supreme Court U. S. Received July 27, 1917.

59 (Indorsed:) File No. 26042, &c. Supreme Court U. S. October term, 1917. Term No. 575 to 580. The United States, P. E., vs. Edward Bathgate et al. Stipulation to omit parts of records in printing. Filed July 27, 1917.

(Indorsed:) No. ——. United States District Court, Southern District of Ohio, Western Division.

(Indorsement on cover:) File No. 26042. S. Ohio, D. C. U. S. Term No. 575. The United States of America, plaintiff in error, vs. Edward Bathgate, Matthew Peacock, John Toker, et al. Filed July 19th, 1917. File No. 26042.

○

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 576.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

JOHN J. BURCKHAUSER, PHILIP BOEHLER, AL BROSKEY ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1

Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
JOHN J. BURCKHAUSER, PHILLIP BOEHLER, AL BROSKEY, Thomas Jones, Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, and George Phyles, defendants in error. | No. ——.

Transcript.

Error to the District Court of the United States for the Western Division of the Southern District of Ohio.

STUART R. BOLIN, Columbus, O.,
U. S. Attorney, S. D. O.,
JAMES R. CLARK, Cincinnati, O.,
Asst. U. S. Attorney, S. D. O.,
Attorneys for Plaintiff in Error.
JOHN R. HOLMES, Cincinnati, O.,
SHERMAN T. MCPHERSON, Cincinnati, O.,
FROOME MORRIS, Cincinnati, O.,
M. MULLER, Cincinnati, O.,
Attorneys for Certain Defendants in Error.

2

No. 1137.

UNITED STATES DISTRICT COURT,
Southern District of Ohio, Western Division, ss:

In the District Court of the United States within and for the district and division aforesaid. Present: The Honorable Howard C. Hollister, judge. Among the proceedings had were the following, to wit:

THE UNITED STATES OF AMERICA,
vs.
JOHN J. BURCKHAUSER, PHILLIP BOEHLER, AL. Broskey, Thomas Jones, Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, and George Phyles. | Indictment No. 1137.

Be it remembered, that, to wit: On the twenty-fifth day of January, in the year of our Lord one thousand nine hundred and seventeen, came the grand jurors of the United States of America, within

and for the Western Division of the Southern District of Ohio, and presented to the court their certain bill of indictment herein, which said bill of indictment is clothed in the words and figures following, to wit:

3 In the District Court of the United States of America for the Southern District of Ohio, Western Division, of the October term in the year nineteen hundred and sixteen.

SOUTHERN DISTRICT OF OHIO,
Western Division, ss.

Count One—Section 19, Penal Code.—The grand jurors of the United States of America, empaneled and sworn in the District Court of the United States for the Western Division of the Southern District of Ohio, at the October term thereof, in the year nineteen hundred and sixteen, and inquiring for that division and district, upon their oaths and affirmations, charge and present that John J. Burckhauser, Phillip Boehler, A. Broskey, Thomas Jones, Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, and George Phyles, together with other persons whose names are to the grand jurors unknown, throughout the period of time from October first, nineteen hundred and sixteen, to and including November seventh, nineteen hundred and sixteen, in Hamilton County, within the State of Ohio, and within the Western Division of the Southern District of said State of Ohio, and within the jurisdiction of the above entitled court, did feloniously conspire, combine, confederate and agree together, and with other persons whose names are to the grand jurors unknown, to injure, oppress, threaten and intimidate certain citizens of the United States, to-wit:

4 James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancelor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson and George Hodges, and each of them, in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States, to wit:

First, of being candidates for presidential electors from the State of Ohio at a general election which was to be, and in fact was held in the State of Ohio, and in the first congressional district thereof, on said seventh day of November, at which time presidential electors for the State of Ohio were to be, and in fact were voted for, chosen and elected, and at which time a United States Senator for the State of Ohio was to be, and in fact was voted for, chosen and elected, and at which time a Representative in the Congress of the United States of

America, in said first congressional district of Ohio, was to be, and in fact was, voted for, chosen and elected.

Second, of having qualified voters appear at the polls and vote at said election for presidential electors.

Third, of having only qualified voters vote at said election for presidential electors.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted and returned at said election for presidential electors.

Fifth, of having their election or rejection decided and determined by voters who had not been bribed, and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said
5 election make a true, correct and accurate court and return of the legal and only the legal votes cast by qualified voters for presidential electors.

First, by then and there bribing a large number of otherwise qualified voters at said election and promising them in advance of their voting sums of money to vote against said presidential electors, and each of them, and to vote in favar of opponents of said presidential electors, and by causing the said voters so bribed and promised, as aforesaid, to purposely and intentionally place and cause to be placed, each respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, George Phyles, and other persons whose names are, as aforesaid, to the grand jurors unknown.

Second, and also by causing each of said precinct election boards to accept and receive said illegal votes, and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy and to effect the object thereof the defendant injured the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swart-
6 ling, Prior Cook, Duff Fowler, Clem Davis, George Phyles, and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards

in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in said count and return.

That the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges were candidates for presidential electors at said election and their names appeared upon the ballots to be voted thereat; that neither was a Senator or Representative or person holding office of trust or profit under the United States on said day or at any time within two years immediately prior thereto; that neither had ever engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof; that each was at said time, and had been for more than five years immediately prior thereto, a bona fide resident of the State of Ohio; that each on said day was twenty-five years old or upwards and was, at said time, a male citizen of the United States and each was a resident voter of a ward and precinct within the State of Ohio, in which wards and precincts they had respectively resided for more than thirty days immediately prior to said election; that each was a qualified voter and entitled to vote at said election; that each possessed all the qualifications required by law for presidential electors, including the qualifications above set out; that the name of each appeared upon the ballot to be voted for at said election.

7 And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement, the said John J. Burckhauser, Phillip Boehler, Al. Broskey, Thomas Jones, Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, George Phyles, and other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate a certain citizen of the United States, to wit, Atlee Pomerene, in the free exercise and enjoyment of certain rights and privileges secured to him by the Constitution and laws of the United States, to wit:

First, of being a candidate for United States Senator from the State of Ohio at said election.

Second, of having qualified electors appear at the polls and vote at said election for United States Senator.

Third, of having only qualified voters vote at said election for United States Senator.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for United States Senator.

Fifth, of having his election or rejection decided and determined by voters who had not been bribed, and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal, and only the legal, votes cast by qualified voters for United States Senator.

(First), by then and there bribing a large number of otherwise qualified voters at said election and promising in advance of
8 their voting sums of money to vote against the said Atlee Pomerene, and to vote for an opponent of said Atlee Pomerene, and by causing the said voters so bribed and promised as aforesaid to purposely and intentionally place and cause to be placed, each respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, George Phyles, and other persons whose names are to the grand jurors unknown; and also

(Second), by causing each of said precinct election boards to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy and to effect the object thereof, the defendants feloniously injured the said Atlee Pomerene, and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of Daniel Allen, Henry Prior, Edward R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Duff Fowler, Clem Davis, George Phyles, and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards in the various precincts of said congressional districts to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in said count and return.

That the said Atlee Pomerene was a candidate for United States Senator from the State of Ohio at said election; that his name
9 appeared upon the ballots to be voted for at said election for said office.

That on said day the said Atlee Pomerene was more than thirty years of age, and was, and for more than nine years last past had been, a citizen of the United States, and a resident and inhabitant of the State of Ohio, and of the city of Canton, in the county of Stark, and of the second ward of said city, and that he was then

and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof, and that he possessed all the qualifications required by law for United States Senator, including the qualifications above set forth.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement, the said John J. Burckhauser, Phillip Boehler, Al. Broskey, Thomas Jones, Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Duff Fowler, Clem Davis, George Phyles, and said other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate a certain citizen of the United States, to wit, Edward H. Brink, in the free exercise and enjoyment of rights and privileges secured to him by the Constitution and laws of the United States, to wit:

First, of being a candidate for Representative in Congress for the first congressional district of the State of Ohio, at said election;

Second, of having qualified voters appear at the polls and vote at said election for Representative in Congress from said district.

Third, of having only qualified voters vote at said election for Representative in Congress from said district.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for Representative in Congress from said district.

Fifth, of having his election or rejection decided and determined by voters who had not been bribed and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal, and only the legal, votes cast by qualified voters for Representative in Congress in said congressional district.

(First), by then and there bribing a large number of otherwise qualified voters at said election, and promising them, in advance of their voting, sums of money to vote against the said Edward H. Brink and in favor of an opponent, and by causing the said voters so bribed and promised, as aforesaid, to purposely and intentionally place and cause to be placed, each respectively, his own vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Daniel Allen, Henry Prior, Ed R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Duff Fowler, Clem Davis, George Phyles, and other persons whose names are to the grand jurors unknown; and also,

(Second), by causing each of said precinct election boards to accept and receive illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election
11 by including said illegal votes in such count and return.

That in pursuance of said conspiracy and to effect the object thereof, the defendants feloniously injured the said Edward H. Brink, in the manner so planned as aforesaid, and bribed a large number of otherwise qualified voters, and caused the said illegal and wrongful votes of Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Duff Fowler, Clem Davis, George Phyles, to be cast and counted at said election; and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election, by including said illegal votes in said count and return.

That the said Edward H. Brink, was a candidate for a member of the House of Representatives in the Congress of the United States of America in the first congressional district of the State of Ohio at said election; that his name appeared upon the ballots to be voted for at said election for said office; that on said election day the said Edward H. Brink was more than twenty-five years of age, and was, and for more than seven years immediately prior thereto had been a citizen of the United States, and a resident and inhabitant of the State of Ohio and of the city of Norwood, in the county of Hamilton, and of the second ward of said city, and that he was then and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never been engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof, and he possessed all the other qualifications required by law for a member of the House of Representatives of the United States of America, including the qualifications above set forth.

12 And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation and agreement, the said John J. Burckhauser, Phillip Boehler, Al. Broskey, Thomas Jones, Daniel Allen, Henry Prior, Edward R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Duff Fowler, Prior Cook, Clem Davis, George Phyles, and said other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate and agree together and injure, oppress, threaten and intimidate certain citizens of the United States, to wit: each and all of the qualified electors who might actually vote at said election, in each of the voting precincts of the said first congressional district, and each and all of the qualified electors at said election in each of the voting precincts of the State of Ohio, and that

said qualified electors cannot now, and could not ever, all be to the grand jurors identified each by his individual name, and such of said electors as can or could be so identified, are too numerous to list by name in this indictment without unreasonably lengthening the same, and are so numerous as that it would require an unreasonable prolongation of the inventigations by this grand jury to so identify them, in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States, to wit:

First. The right to have the votes and ballots for presidential electors, United States Senators and Representatives in Congress in said congressional district cast in their respective precincts at said election, confined to the votes and ballots of legal and qualified voters of said precincts.

Second. The right to have the votes and ballots cast and
13 counted at said election in said precincts for presidential electors, United States Senators and Representatives in Congress from said congressional district, confined to those cast by electors who had not been bribed, and who had not sold their votes.

Third. The right to have each lawful vote and ballot for presidential electors, United States Senators, and Representatives in Congress at said election, counted to its full strength, unaffected and unimpaired by the casting of votes in said precincts by men who had been bribed and accepted money therefor, and by counting of said votes or any thereof.

Fourth. The right to have the election boards in said election precincts accept and receive only lawful votes cast thereat, and to make a true, correct, and accurate count and return covering only the lawful votes cast by qualified voters for presidential electors, United States Senators, and Representatives in Congress from said district, by then and there bribing in large number of otherwise qualified voters at said election and promising them in advance of their voting sums of money to vote and cast their ballots in said precincts at said election for presidential electors, United States Senator, and Representative in Congress from said congressional district, and by causing the election boards in said precincts to accept and receive said illegal votes and make an untrue, incorrect and inaccurate count and return of the votes cast at said election, by including said illegal votes in such count and return, which men so bribed and purchased included Daniel Allen, Henry Prior, Edward R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Duff Fowler, Clem Davis, George Phyles, and other persons whose names are to the grand jurors unknown.

14 That in pursuance to said conspiracy, and to effect the object thereof, the defendants injured each and all of the qualified electors aforesaid; and as so planned, bribed and purchased the votes of otherwise qualified voters at said election, to wit: Daniel Allen, Henry Prior, Edward R. Von Martels, John W. Jones, Elbert

W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Duff Fowler, Clem Davis, George Phyles, and other persons whose names are to the grand jurors unknown, and promised and agreed in advance of their voting to pay them money therefor; and caused them to vote and cast their ballots in said precincts for presidential electors, United States Senator and Representative in Congress from said district, and cause the election boards in said precincts to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

15 Second Count—Section 19, Penal Code.—And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that, on the seventh day of November, 1916, a general election was held in the State of Ohio under the laws thereof and under the laws of the United States, for the election, among others, of twenty-four presidential electors and a United States Senator for said State, and of a Representative in the Congress of the United States from the first congressional district of said State, which congressional district then included a part of Hamilton County in said State.

That at said election James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, among others, were candidates for presidential electors, and Atlee Pomerene, among others, was a candidate for United States Senator, and Edward H. Brink, among others, was a candidate for Representative in the Congress of the United States from the said congressional district.

That each and all of the said candidates for presidential electors, and for the office of United States Senator, and for the office for Representative in the Congress of the United States, had been theretofore regularly and lawfully chosen and nominated to be such candidates at a primary election next preceding the general election, and held under the laws of the State of Ohio.

That at the time when each and all of said candidates were so chosen and nominated, and continuously thereafter until and 16 including the said seventh day of November, 1916, each and every one thereof saw duly qualified under the Constitution and laws of the United States and of the State of Ohio, to be a candidate, each for the particular office for which he was chosen and nominated, and, likewise, duly qualified to hold such office.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that the said John J. Burckhauser, Phillip Boehler, Al. Broskey, Thomas Jones, Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, George Phyles, each late of the said Hamilton County and of the said congressional district, and being hereinafter referred to together as defendants, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including to said seventh day of November, 1916, at and within the said county of Hamilton, and at and within the said congressional district, in the western division of the southern district of Ohio, each then and there well knowing all the premises aforesaid, unlawfully and feloniously did conspire, combine, confederate, and agree together, and with other persons to the said grand jurors unknown, to injure and oppress certain citizens of the said State and of the United States in the free exercise and enjoyment of certain rights and privileges secured to them, respectively, by the Constitution and laws of the United States; that is to say, the right and privilege appertaining to said several candidates, and to all the legally qualified voters at said election voting in said congressional district (the latter forming a class of
17 persons not capable of individual designation).

(First), of having none of such legally qualified voters unlawfully or fraudulently prevented from voting in said congressional district at said election for such candidates for presidential electors, United States Senator, and Representative as they chose to vote for.

(Second), of having only legal votes cast in said congressional district at said election for any candidate for presidential elector, United States Senator, or Representative in the Congress of the United States, and accepted, received, counted, and returned by the election boards of the said county; and

(Third), of having such election determined by votes not influenced by bribery, fraud, or the wrongful use of money.

And that a description of the means and methods whereby said citizens were so to be injured and oppressed in the free exercise and enjoyment of their said rights and privileges by the said defendants is as follows, to wit:

Said defendants in order fraudulently to favor certain other candidates for the said offices at said election, to wit, U. G. Danman, Edwin Jones, Max Burgheim, George McG. Morris, Lyburn T. Palmer, David Oldham, Samuel A. Rennolet, Newton P. Foster, John M. Mulford, Jacob W. Byers, Solon O. Richardson, John B. Lindsey, Barton Walters, Albert E. Sartain, Sol. M. Wolf, N. S. Everhard, Charles L. Casey, John A. Fouts, Wilson Bradrick, Avery C. Jones, Edward O. Whitney, Edward W. Horn, Harry L. Vail, and W. W. Hall, as candidates for presidential electors;
18 Myron T. Herrick, as candidate for United States Senator; and Nicholas Longworth, as candidate for Representative in

the Congress of the United States, and to secure the election of such other candidates, instead of the election of the candidates hereinbefore first named, without regard to the true preference and choice of said legally qualified voters of said congressional district, unlawfully were to present, by force, intimidation, and fraud, to be used and practiced upon them by said defendants, as many of the said legally qualified voters of said congressional district who were desirous of voting for the candidates first above mentioned from voting at the said election for those candidates as said defendants could prevent by those means; and were to procure, by bribery, payment of money to them for so doing, others of said legally qualified voters desirous of voting for the candidates first above mentioned to vote at said election for said other candidates instead of said candidates first above named, and thereby procuring the acceptance, receipt, counting, and returning in due course by said election boards of said congressional district of such illegal votes and of such votes so influenced by bribery, fraud, and improper use of money, as aforesaid.

And so the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do say, that said John J. Burckhauser, Phillip Boehler, Al. Broskey, Thomas Jones, Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, George Phyles, throughout the period of time, at the place, and in manner and form aforesaid,
19 unlawfully and feloniously did conspire to injure and oppress citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States.

Against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

20 Third Count—Section 37, Penal Code.—The grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that John J. Burckhauser, Phillip Boehler, Al. Broskey, Thomas Jones, Daniel Allen, Henry Prior, Edward R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, George Phyles, together with other persons whose names are to the grand jurors unknown, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including the seventh day of November, 1916, in Hamilton County, within the State of Ohio, and within the western division of the southern district of Ohio, and within the jurisdiction of the above entitled court, did feloniously conspire, combine, confederate, and agree together, and with other persons whose names are to the grand jurors unknown, to defraud the United States of America, in the manner and for the purpose, as follows.

First, by perverting and obstructing, and corruptly administering and procuring to be corruptly administered, and maladministering and causing to be maladministered, and by committing and causing to be committed, wilful frauds upon each of the following sections of the Constitution of the United States, to wit:

(a) Article 2, section 1, of the Constitution of the United States, providing for the election of the President and Vice President of the United States.

(b) The twelfth amendment to said Constitution, providing
21 for the election of President and Vice President of the United States.

(c) The seventeenth amendment to said Constitution, providing for the election of Senators by direct vote.

(d) Article 1, section 2, of said Constitution, providing for the election of Representatives in the Congress of the United States of America.

(e) Article 1, section 4, of said Constitution, providing for the time, place, and manner of holding elections for Senators and Representatives of the United States.

(f) An act of the Congress of the United States, entitled, "An act providing a temporary method of conducting the nomination and election of United States Senators," approved June 4th, 1914.

Second, by denying to and preventing the enjoyment by the United States of America of certain governmental rights and functions to it then and there belonging, namely:

(a) The right and function to have the election of candidates for presidential electors, United States Senators and Representatives in the Congress of the United States of America determined by the votes of voters who have not been bribed;

(b) The right and function to have the election boards accept, receive, count, and return the legal, and only the legal, votes cast by qualified voters for presidential electors, United States Senators, and Representatives in the Congress of the United States;

(c) The right and function to have all qualified voters vote for presidential electors, United States Senators, and Representatives in the Congress of the United States without unlawful interference and without intimidation;

22 Third, by obtaining from the governor of the State of Ohio a certificate of election, sealed with the seal of and attested by the secretary of state of said State, certifying that the general election held on Tuesday, November seventh, A. D. nineteen hundred and sixteen, at which presidential electors and a United States Senator for the State of Ohio and a Representative in the Congress of the United States for the first congressional district of the State of Ohio were voted for, chosen, and elected one Nicholas Longworth, whom they intended as a part of said conspiracy to elect by fraud and illegality and contrary to the laws of said State of Ohio and the Constitution and laws of the United States, in the manner hereinafter set out, was regularly elected a Representative in the

Congress of the United States from the first congressional district in said State at said election and in accordance with the laws of said State and the Constitution and laws of the United States of America, and by causing said Nicholas Longworth to present said certificate of election to the House of Representatives of the United States of America, and to the Clerk of the last preceding House of Representatives of the United States of America, before the first meeting of the Sixty-fourth Congress of the United States, in order that the said Nicholas Longworth should have his name placed on the roll of the Representatives elected in said body.

Fourth, by forcing upon the United States of America and upon the House of Representatives of the Congress thereof as a duly elected Member of said House of Representatives the said
23 Nicholas Longworth, and thereby securing for him, the said Nicholas Longworth, the privileges, immunities, and emoluments of a Member of the said House of Representatives, including the statutory pay of seventy-five hundred dollars per annum provided by law as the compensation for the yearly service of any duly elected Member of said House of Representatives.

Fifth, by voting and causing to be voted for candidates for presidential electors and for candidates for United States Senators and for a candidate for Representative in Congress at said election in the various election precincts of the first congressional district, Hamilton County, in the said State of Ohio, a large number of persons to be thereafter chosen by the said defendants, who did not or would not then have or possess the qualifications for electors required by the seventeenth amendment, and by article 1, section 2, of the Constitution of the United States of America and by the laws of the State of Ohio governing the qualifications of electors at said election, with full knowledge upon the part of said defendants and each of them that the said persons so to be voted and caused to be voted, as aforesaid, did not and would not then have or possess the requisite qualifications for electors at said election.

Sixth, by corruptly purchasing and debauching the said election by bribing and buying any men they, the said defendants, could bribe and buy, which said men so to be bought, bribed, and purchased were to be chosen and selected by said defendants in the various precincts of the first congressional district of said Hamilton County and by procuring said men.

24 Seventh, by causing the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect and inaccurate return of the votes cast therein, by including said illegal votes in said count and return.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterwards, to wit, on the seventh day of November in the year of our Lord one thousand nine hundred and sixteen, in pursuance of, and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the

object, design and purpose of said conspiracy, combination, confederation and agreement aforesaid, the said defendant John J. Burckhauser procured the said defendant Harry Toker, a registered voter in precinct U, ward 18, of the city of Cincinnati, in the first congressional district of Ohio, to vote the straight Republican ticket at said election, and then and there and at the same time instructed and promised the said defendant, Harry Toker, that after he had voted in accordance with said instruction and agreement he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of said conspiracy, said defendant, Harry Toker, so marked his ballot and cast the same as to vote the straight Republican ticket, and after having cast his said ballot and so voted and in further pursuance of said instructions and agreement and to effect the object of said conspiracy, and immediately after he had voted in accordance with said instructions and agreement, the
25 said Harry Toker, met the said defendant, John J. Burckhauser, and in the presence of said defendant, Thomas Jones, and in close proximity to the voting place in said ward and precinct, the said defendant John J. Burckhauser then and there paid the said defendant Harry Toker the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterwards, to wit, on the seventh day of November in the year of our Lord one thousand nine hundred and sixteen, in pursuance of, and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design and purpose of said conspiracy, combination, confederation and agreement aforesaid, the said defendant, John J. Burckhauser, procured the said defendant, Ed. R. Von Martels, a registered voter in precinct U, ward 18, of the city of Cincinnati, in the first congressional district of Ohio, to vote the straight Republican ticket at said election, and then and there and at the same time instructed and promised the said defendant, Ed. R. Von Martels, that after he had voted in accordance with said instruction and agreement he would be paid money therefor; that pursuant to said instruction and agreement and in furtherance of said conspiracy, said defendant, Ed. R. Von Martels, so marked his ballot and cast the same as to vote the straight Republican ticket, and after having cast his said ballot and so voted in the further pursuance of said instructions and agreement and to effect the object of said conspiracy, and immedintely after he had voted in accordance
26 with said instruction and agreement, the said Ed. R. Von Martels, met the said defendant, John J. Burckhauser, and in the presence of the said defendant, Thomas Jones, and in close proximity to the voting place in said ward and precinct, the said defendant John J. Burckhauser then and there paid the said defendant Ed. R. Von Martels, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterwards, to wit, on the seventh day of November, in the year of our Lord one thousand

nine hundred and sixteen, in pursuance of, and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design and purpose of said conspiracy, combination, confederation, and agreement aforesaid, the said defendant, John J. Burckhauser, procured the said defendant, John W. Jones, a registered voter in precinct U, ward 18, of the city of Cincinnati, in the first congressional district of Ohio, to vote the straight Republican ticket at said election, and then and there and at the same time instructed and promised the said defendant, John W. Jones, that after he had voted in accordance with said instructions and agreement he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of said conspiracy, said defendant, John W. Jones, so marked his ballot and cast the same as to vote the straight Republican ticket, and after having cast his said ballot and so voted, and in further pursuance of said instructions and agreement and to effect the object of said conspiracy, and immediately after he had voted in accordance with said instructions and agreement, the said John W. Jones met the said
27 defendant, John J. Burckhauser, and in the presence of said defendant, Thomas Jones, and in close proximity to the voting place in said ward and precinct, the said defendant, John J. Burckhauser, then and there paid the said defendant, John W. Jones, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterwards, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of, and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid, the said defendant John J. Burckhauser procured the said defendant Joseph Swartling, a registered voter in precinct U, ward 18, of the city of Cincinnati, and in the first congressional district of Ohio, to vote the straight Republican ticket at said election, and then and there and at the same time, and by and with the use of a sample ballot to demonstrate the same, instructed and procured the said Joseph Swartling to mark his ballot by placing an X in the circle under the design of the eagle on said ballot and cast the vote of him, the said Joseph Swartling, in said ward and precinct, in accordance with said procurement and instruction; that the said John J. Burckhauser then and there and at the same time instructed and promised the said Joseph Swartling that after he had voted in accordance with said instruction he would be paid money therefor; that pursuant to said instruction and agreement and in furtherance of said conspiracy, said defendant
28 Joseph Swartling, marked his ballot by placing an X in the circle under the design of the eagle thereon and so cast the same, and after having cast his said ballot and in further pursuance of said instruction and agreement and to effect the object of

said conspiracy, and immediately after he had voted in accordance with said instruction and agreement, the said Joseph Swartling, met the said defendant Philip Boehler, in the premises known as No. 501 West 4th Street, in the city of Cincinnati, and in the first congressional district of Ohio, which said premises are in close proximity to the voting place in said ward and precinct, and then and there and in accordance with said agreement and in furtherance of said conspiracy, and to effect the object thereof, said defendant Philip Boehler, paid said defendant Joseph Swartling, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterwards, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of, and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design and purpose of said conspiracy, combination, confederation and agreement aforesaid, the said defendant John J. Burckhauser procured the said defendant Henry Langhorst, a registered voter in precinct U, ward 18, of the city of Cincinnati, in the first congressional district of Ohio, to vote the straight Republican ticket at said election, and then and there and at the same time instructed and promised the said defendant Henry Langhorst that after he had voted in accordance with said instruction and agreement he would be paid money therefor; that pursuant to said instructions and agreement in *in* furtherance of said conspiracy,
29 said defendant Henry Langhorst marked his ballot by placing an X in the circle under the design of the eagle thereon, and so cast the same, and after having cast his said ballot, and in further pursuance of said conspiracy, and immediately after he had voted in accordance with said instruction and agreement, the said Henry Langhorst met the said defendant Philip Boehler in the premises known as No. 501 West Fourth Street, in the city of Cincinnati, and in the first congressional district of Ohio, which said premises are in close proximity to the voting place in said ward and precinct, and then and there, and in accordance with said agreement, and in furtherance of said conspiracy, and to effect the object thereof, said defendant Philip Boehler paid said defendant Henry Langhorst the sum of one dollar.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

STUART R. BOLIN,
United States Attorney.

The foregoing indictment was endorsed as follows: A true bill. J. L. Clark, foreman. Filed January 25, 1917. B. E. Dilley, Clerk.

30 And afterwards, to wit, on the 22nd day of May, A. D. 1917, came the defendants, John J. Burckhauser, Philip Boehler, and A. Broskey, by their attorneys, and filed in the clerk's office of the court aforesaid a certain demurrer in this cause, which said demurrer is clothed in the words and figures following, to wit:

Demurrer.

In the District Court of the United States of America, for the Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* JOHN J. BURCKHAUSER, PHILLIP BOEHLER, AND A. Broskey, defendants.	No. 1137.

Demurrer of John J. Burckhauser, Phillip Boehler, and A. Broskey to the indictment.

Now come the defendants, John J. Burckhauser, Phillip Boehler, and A. Broskey, and demur to the indictment herein and to each and every count thereof for the reason that the said indictment and the several counts thereof do not state facts sufficient to charge offenses against the laws of the United States of America.

Defendants further demur to each of the several counts hereof by reason of defects apparent therein, the particulars of said defects in said counts being as follows, to wit:

First and second counts.

Defendants demur to the first and second counts of said indictment for the reason that the same do not state facts sufficient to charge an offense against the laws of the United States of America in the following particulars, to wit:

First. Because it appears from the allegations of said counts that the various rights and privileges therein set forth, alleged to be the rights and privileges of James E. Campbell and other alleged
31 candidates for presidential electors; Atlee Pomerene, alleged candidate for Senator of the United States from the State of Ohio; Edward Brink, alleged candidate for Member of the House of Representatives of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the State of Ohio and each and all of the qualified electors in each of the voting precincts of the State of Ohio, are not secured to them or either of them, by the Constitution or laws of the United States.

Second. Because it does not appear from the allegations of said counts that James E. Campbell and other alleged candidates for presidential electors; Atlee Pomerene, alleged candidate for Senator of the United States from the State of Ohio; Edward Brink,

alleged candidate for the House of Representatives of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the State of Ohio, and each and all of the qualified electors in each of the voting precincts of the State of Ohio could have been injured, oppressed, threatened, or intimidated in the free exercise and enjoyment of any right or privilege secured to them or either of them by the Constitution or laws of the United States by reason of said alleged conspiracy.

Third. Because said counts fail to set forth any offense committed against the laws of the United States, but the offense sought to be alleged therein, if any is so described, was an offense against the laws of the State of Ohio.

Fourth. Because the said counts and each of them show that this court has no jurisdiction to try and punish the alleged offenses therein described.

Fifth. Because in other particulars said counts and each of them fail to describe any offense against the laws of the United States.

Third count.

32 Defendants demur to the third count of said indictment for the reason that the same does not state sufficient to charge an offense against the laws of the United States of America in the following particulars, to-wit:

First. Because the allegations of said count do not describe a conspiracy either to commit an offense punishable by the laws of the United States or to defraud the United States in any manner or for any purpose.

Second. Because the offense therein set forth, if the same be an offense, is not an offense against the United States, but against the State of Ohio.

Third. Because the United States can not be defrauded in any manner or for any purpose by the alleged conspiracy of the defendants as set forth in said count.

Fourth. Because the United States can not be defrauded in any manner or for any purpose by any of the alleged purposes of the defendants alleged to have been the results sought to be attained by by said conspiracy.

Fifth. Because the alleged overt acts described in said counts could not in any manner or for any purpose defraud or tend to defraud the United States.

Sixth. Because in other particulars, said count fails to describe any offense against the laws of the United States.

SHERMAN T. MCPHERSON,
JOHN R. HOLMES,
FROOME MORRIS,
M. MULLER,
Attorneys for Defendants.

33 And afterwards, to-wit: on the 22nd day of May A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to-wit:

Entry—2–332.

District Court of the United States of America, Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
JOHN J. BURCKHAUSER ET AL., DEFENDANTS. } No. 1137. Entry.

This day this cause came on to be heard on the indictment and the demurrer thereto, and being argued by counsel, and the court being fully advised in the premises, finds it has no jurisdiction of the matters and things charged in said indictment, and it is therefore ordered, adjudged, and decreed that said demurrer be and it is hereby sustained, and the defendants, and each of them be and they are hereby discharged from further attendance upon this court, to all of which the United States by its counsel excepts.

HOLLISTER, *Judge.*

And afterwards, to-wit: on the 19th day of June, A. D. 1917, the following petition for writ of error was filed in the clerk's office of said court:

Petition for writ of error.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
v.
JOHN J. BURCKHAUSER, PHILIP BOEHLER, AL. Broskey, Thomas Jones, Daniel Ellen, Henry Prior, Ed R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry
34 Langhorst, Henry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis and George Phyles, defendants. } No. 1137. Petition for writ of error.

Now comes the United States of America, plaintiff herein, and says that on or about the twenty-second day of May, 1917, this court entered a judgment herein against the plaintiff and in favor of the defendants, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignments of error which is filed with this petition.

Wherefore, the United States of America, plaintiff herein, prays that a writ of error may issue in its behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record of the proceedings and papers in this cause duly authenticated may be sent to the said Supreme Court of the United States.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

Assignment of errors.

And afterwards, to-wit: on the 19th day of June, A. D. 1917, the following assignment of errors was filed in the clerk's office of said court:

United States District Court, Southern District of Ohio, Western Division.

35 THE UNITED STATES OF AMERICA, PLAINTIFF,
v.
JOHN J. BURCKHAUSER, PHILLIP BOEHLER, AL. Broskey, Thomas Jones, Daniel Ellen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Henry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis and George Phyles, defendants.

No. 1137. Assignment of errors.

Assignment of errors.

The plaintiff in this action, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers were committed upon the trial of this cause, to-wit:

I. The court erred in its decision and judgment sustaining the demurrer to the indictment and each count thereof.

II. (a) The court erred in its decision and judgment sustaining the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment sustaining the demurrer to the second count of said indictment.

III. (a) The court erred in its construction of the statute upon which the first count of said indictment was based, and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said first count of said indictment.

(b) The court erred in its construction of the statute upon which the second count of said indictment was based; and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said second count of said indictment.

IV. (a) The court erred in its decision and judgment in not overruling the demurrer to the first count of said indictment.

36 (b) The court erred in its decision and judgment in not overruling the demurrer to the second count of said indictment.

V. The court erred in its decision and judgment in not overruling the demurrer to said indictment and to each count thereof.

For these reasons the plaintiff, The United States of America, asks that this case be reviewed, and that such judgment be rendered in the Supreme Court of the United States as should have been rendered in the court below, and that such action be taken as will protect the rights of the plaintiff in the premises.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

And afterwards, to wit, on the 19th day of June, A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to wit:

Entry—12-354.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *vs.* JOHN J. BURCKHAUSER, PHILLIP BOEHLER, AL. Broskey, Thomas Jones, Daniel Ellen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Henry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, and George Phyles, defendants.	Entry. No. 1137.

Now comes the United States attorney on behalf of the plaintiff and presents for allowance a petition for a writ of error and

37 assignments of error accompanying same, upon consideration of which the court hereby allows said petition and orders a writ of error to the Supreme Court of the United States.

HOLLISTER,
United States District Court, S. D. O.

38 And afterwards, to wit, on the 27th day of June, A. D. 1917, the following stipulation was filed in the clerk's office of said court:

Stipulation.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *vs.* JOHN J. BURCKHAUSER, PHILLIP BOEHLER, AL. BROSKEY, Thomas Jones, Daniel Ellen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Henry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, and George Phyles, defendants.	No. 1137. Stipulation.

It is hereby agreed and stipulated that the record in this cause, so far as the undersigned are concerned, shall consist of the following: Indictment, demurrer to indictment, opinion of court on demurrer, order sustaining demurrer, petition for writ of error, assignments of error and order allowing writ.

The clerk is therefore requested to prepare a transcript of the foregoing pleadings and papers to be filed in the Supreme Court of the United States.

THE UNITED STATES OF AMERICA.
By STUART R. BOLIN,
United States Attorney.
Per JAMES R. CLARK,
Assistant U. S. Attorney.
JOHN J. BURCKHAUSER,
PHILLIP BOEHLER, and
A. BROSKEY,
By JOHN R. HOLMES,
SHERMAN T. MCPHERSON,
FROOME MORRIS,
M. MULLER,
Their Attorneys.
HENRY PRIOR and
PRIOR COOK,
By A. LEE BEATY,
Their Atty.

* * * * * * *

57 United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA
vs.
JOHN J. BURCKHAUSER ET AL. } No. 1137.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

I, B. E. Dilley, clerk of the District Court of the United States within and for the district and division aforesaid, do hereby certify that the foregoing is a true and correct transcript of the opinion of the court and of those portions of the record in the above-entitled cause, designated in the stipulation filed therein on June 27, 1917, as the same remain of record and on file in the office of the clerk of said court, and that the same constitutes the return to the annexed writ of error.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said court at the city of Cincinnati, Ohio, this 11th day of July, A. D. 1917.

[SEAL.]

B. E. DILLEY, *Clerk.*
By HARRY F. RABE, *Deputy.*

58 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the District Court of the United States for the Southern District of Ohio, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between the United States of America, plaintiff, and John J. Burckhauser, Phillip Boehler, Al Broskey, Thomas Jones, Daniel Ellen, Henry Prior, Ed R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Henry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, and George Phyles, defendants, a manifest error hath happened, to the great damage of the said the United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may

cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.] B. E. DILLEY,
Clerk of the District Court of the United States for the Southern District of Ohio.
By HARRY F. RABE, *Deputy.*

Allowed by—
H. C. HOLLISTER,
Judge of the District Court of the United States for the Southern District of Ohio.

(Indorsed:) Filed Jun. 19, 1917. B. E. Dilley, clerk.

59 UNITED STATES OF AMERICA, *ss:*

To John J. Burckhauser, Phillip Boehler, Al Broskey, Thomas Jones, Daniel Ellen, Henry Prior, Ed R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Henry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, and George Phyles, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the Southern District of Ohio, Western Division, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

H. C. HOLLISTER,
District Judge of the United States for the Southern District of Ohio.

60 On this 11th day of July, in the year of our Lord one thousand nine hundred and seventeen, personally appeared John F. Burns, deputy U. S. marshal, before me, the subscriber, Stephen H. Waters, notary public, Hamilton County, Ohio, and makes oath that he delivered a true copy of the within citation to Thomas Jones,

Daniel Ellen, Ed R. Von Martels, Elbert W. Brown, Joseph Swartling, and Henry Toker.

M. DEVANNEY,
U. S. Marshal, S. D. O.
By JOHN F. BURNS, *Deputy.*

Sworn to and subscribed the 11th day of July, A. D. 1917.
[SEAL.]
STEPHEN H. WATERS,
Notary Public, Hamilton County.

Cinti., O., June 23, 1917.

(Indorsed:) Marshal's criminal docket No. 552. Rec'd July 7–17.

We acknowledge service on the within citation as to John J. Burckhauser, Philip Boehler, and Al Broskey.

JOHN R. HOLMES,
SHERMAN T. MCPHERSON,
FROOME MORRIS,
M. MULLER,
Attys. for Defts. Above Named.

I acknowledge service on the within citation as to Prior Cook.

A. LEE BEATY,
Atty. for Deft. Above Named.

Marshal's fees: 6 services $12.00.

61 (Indorsed:) No. ——. United States District Court, Southern District of Ohio, Western Division.

(Indorsement on cover:) File No. 26043. S. Ohio, D. C. U. S. Term No. 576. The United States of America, plaintiff in error, vs. John J. Burckhauser, Philip Boehler, Al Broskey, et al. Filed July 19th, 1917. File No. 26043.

O

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 577.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

HARRY COONS, JOHN OTTO, JOSEPH MILLER, ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1 Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
HARRY COONS, JOHN OTTO, JOSEPH MILLER, BIRD FISHER, Jessie Bell, James Cole, William Cooper, Edgar Smith, and George Fowler, defendants in error. } No. ——.

Transcript—Error to the District Court of the United States for the Western Division of the Southern District of Ohio.

STUART R. BOLIN, *Columbus, O.,*
U. S. Attorney, S. D. O.,
JAMES R. CLARK, *Cincinnati, O.,*
Asst. U. S. Atty, S. D. O.,
Attorneys for Plaintiff in Error.
JOHN R. HOLMES, *Cincinnati, O.,*
SHERMAN T. MCPHERSON, *Cincinnati, O.,*
FROOME MORRIS, *Cincinnati, O.,*
M. MULLER, *Cincinnati, O.,*
Attorneys for Certain Defendants in Error.

(Indorsed:) Office of the clerk, Supreme Court U. S. Received July 19, 1917.

2 No. 1138.

UNITED STATES DISTRICT COURT,
Southern District of Ohio, Western Division, ss:
In the District Court of the United States within and for the district and division aforesaid.
Present: The Honorable Howard C. Hollister, judge.
Among the proceedings had were the following, to wit:

THE UNITED STATES OF AMERICA
vs.
HARRY COONS, JOHN OTTO, JOSEPH MILLER, Bird Fisher, Jessie Bell, James Cole, William Cooper, Edgar Smith, and George Fowler. } Indictment No. 1138.

Be it remembered that, to wit, on the twenty-fifth day of January, in the year of our Lord one thousand nine hundred and seventeen, came the grand jurors of the United States of America, within and for the Western Division of the Southern District of Ohio, and presented to the court their certain bill of indictment herein, which said

bill of indictment is clothed in the words and figures following, to wit:

3 In the District Court of the United States of America for the Southern District of Ohio, Western Division.

SOUTHERN DISTRICT OF OHIO,
Western Division, ss:

Of the October term in the year nineteen hundred and sixteen.

Count one (section 19, Penal Code). The grand jurors for the United States of America, empaneled and sworn in the District court of the United States for the Western Division of the Southern District of Ohio, at the October term thereof, in the year nineteen hundred and sixteen, and inquiring for that division and district, upon their oaths and affirmations charge and present that:

Harry Coons, John Otto, Joseph Miller, Bird Fisher, Jessie Bell, James Cole, William Cooper, Edgar Smith, and George Fowler, together with other persons whose names are to the grand jurors unknown, throughout the period of time from October first, nineteen hundred and sixteen, to and including November seventh, nineteen hundred and sixteen, in Hamilton County, within the State of Ohio, and within the Western Division of the Southern District of said State of Ohio, and within the jurisdiction of the above-entitled court, did feloniously conspire, combine, confederate, and agree together and with other persons whose names are to the grand jurors unknown, to injure, oppress, threaten, and intimidate certain citizens of the United States, to wit:

James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry,
4 Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, and each of them, in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States, to wit:

First, of being candidates for presidential electors from the State of Ohio at a general election which was to be, and, in fact, was held in the State of Ohio, and in the first congressional district thereof, on said seventh day of November, at which time presidential electors for the State of Ohio were to be, and in fact were, voted for, chosen, and elected, and at which time a United States Senator for the State of Ohio was to be, and in fact was, voted for, chosen, and elected, and at which time a Representative in the Congress of the United States of America, in said first congressional district of Ohio, was to be, and in fact was, voted for, chosen, and elected.

Second, of having qualified voters appear at the polls and vote at said election for presidential electors.

Third, of having only qualified voters vote at said election for presidential electors.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for presidential electors.

Fifth, of having their election or rejection decided and determined by voters who had not been bribed and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct and accurate count and return of the legal and only the legal votes cast by qualified voters for presidential electors.

First, by then and there bribing a large number of otherwise qualified voters at said election and provising them in advance of their voting, sums of money to vote against said presidential electors, and each of them, and to vote in favor of opponents of said presidential electors, and by causing the said voters so bribed and promised as aforesaid, to purposely and intentionally place and cause to be placed, each respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Joseph Miller, Bird Fisher, Jessie Bell, and James Cole, William Cooper, Edgar Smith, and George Fowler, and other persons whose names are, as aforesaid, to the grand jurors unknown.

Second, and also by causing each of said precinct election boards to accept and receive said illegal votes, and to make untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy, and to effect the object thereof, the defendants injured the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, and bribed a large number of otherwise qualified voters, and caused the said illegal and wrongful votes of Joseph Miller, Bird Fisher, Jessie Bell, and James Cole, William Cooper, Edgar Smith, and George Fowler and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect and inaccurate count and return of the votes cast at said election by including said illegal votes in said count and return.

That the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer,

Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seaward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson and George Hodges were candidates for presidential electors at said election, and their names appeared upon the ballots to be voted thereat; that neither was a senator or representative or person holding office of trust or profit under the United States on said day or at any time within two years immediately prior thereto; that neither had ever engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that each was at said time, and had been for more than five years immediately prior thereto, a bona fide resident of the State of Ohio; that each on said day was twenty-five years old or upwards, and was at said time a male citizen of the United States, and each was a resident voter of a ward and precinct within the State of Ohio, in which wards and precincts they had respectively resided for more than thirty days immediately prior to said election; that each was a qualified voter and entitled to vote at said election; that each possessed all the qualifications required by law for presidential electors, including the qualifications above set out; that the name of each appeared upon the ballot to be voted for at said election;

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, con-
7 federation and agreement, the said Harry Coons, John Otto, Joseph Miller, Bird Fisher, Jessie Bell, and James Cole, William Cooper, Edgar Smith, and George Fowler, and other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate a certain citizen of the United States, to-wit: Atlee Pomerene, in the free exercise and enjoyments of certain rights and privileges secured to him by the Constitution and laws of the United States, to-wit:

First, of being a candidate for United States Senator from the State of Ohio at said election.

Second, of having qualified electors appear at the polls and vote at said election for United States Senator.

Third, of having only qualified voters vote at said election for United States Senator.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for United States Senator.

Fifth, of having his election or rejection decided and determined by voters who had not been bribed, and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal, and only the legal, votes cast by qualified voters for United States Senator.

(First.) By then and there bribing a large number of otherwise qualified voters at said election and promising in advance of their voting sums of money to vote against the said Atlee Pomerene, and to vote for an opponent of said Atlee Pomerene, and by causing the said voters so bribed and promised as aforesaid to purposely and intentionally place and cause to be placed, each respectively, his said vote in the ballot box at said election, which said voters so
8 agreed to be purchased and bought were Joseph Miller, Bird Fisher, Jessie Bell, and James Cole, William Cooper, Edgar Smith, and George Fowler and other persons whose names are to the grand jurors unknown; and also

(Second.) By causing each of said precinct election boards to accept and receive said illegal votes, and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return;

That in pursuance of said conspiracy, and to effect the object thereof, the defendants feloniously injured the said Atlee Pomerene, and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of Joseph Miller, Bird Fisher, Jessie Bell, and James Cole, William Cooper, Edgar Smith, and George Fowler and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards in the various precincts of said congressional districts to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election, by including said illegal votes in said count and return;

That the said Atlee Pomerene was a candidate for United States Senator, from the State of Ohio at said election; that his name appeared upon the ballots to be voted for at said election for said office.

That on said day the said Atlee Pomerene was more than thirty years of age, and was, and for more than nine years last past had been, a citizen of the United States, and a resident and inhabitant of the State of Ohio and of the city of Canton, in the county of Stark, and of the second ward of said city, and that he was then and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never engaged in insurrection or rebellion against the United States, or given aid or
9 comfort to the enemies thereof, and that he possessed all the qualifications required by law for United States Senators, including the qualifications above set forth.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement, the said Harry Coons, John Otto, Joseph Miller, Bird Fisher, Jessie Bell, and James Cole, William Cooper, Edgar Smith, and George Fowler, and said other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate a certain citizen of the United States, to-wit: Edward

H. Brink, in the free exercise and enjoyment of rights and privileges secured to him by the Constitution and laws of the United States, to-wit:

First, of being a candidate for Representative in Congress for the first congressional district of the State of Ohio, at said election.

Second, of having only qualified voters appear at the polls and vote at said election for Representative in Congress from said district.

Third, of having only qualified voters vote at said election for Representative in Congress from said district.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for Representative in Congress from said district.

Fifth, of having his election or rejection decided and determined by voters who had not been bribed, and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal and only the legal votes cast by qualified voters for Representatives in *in* Congress in said congressional district.

(First.) By then and there bribing a large number of otherwise qualified voters at said election, and promising them in advance of their voting sums of money to vote against the said Edward H. Brink and in favor of an opponent, and by causing the said voters so bribed and promised, as aforesaid, to purposely and intentionally place and cause to be placed, each respectively, his own vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Joseph Miller, Bird Fisher, Jessie Bell, and James Cole, William Cooper, Edgar Smith, and George Fowler, and other persons whose names are to the grand jurors unknown; and also—

(Second.) By causing each of said precinct election boards to accept and receive illegal votes and to make an untrue, incorrect and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy and to effect the object thereof, the defendants feloniously injured the said Edward H. Brink, in the manner so planned as aforesaid, and bribed a large number of otherwise qualified voters, and caused the said illegal and wrongful votes of Joseph Miller, Bird Fisher, Jessie Bell, William Cooper, Edgar Smith, George Fowler, and James Cole to be cast and counted at said election; and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election, by including said illegal votes in said count and return.

That the said Edward H. Brink was a candidate for a Member of the House of Representatives in the Congress of the United States of America in the first congressional district of the

11 State of Ohio at said election; that his name appeared upon the ballots to be voted for at said election for said office; that on said election day the said Edward H. Brink, was more than twenty-five years of age, and was, and for more than seven years immediately prior thereto had been, a citizen of the United States, and a resident and inhabitant of the State of Ohio and of the city of Norwood, in the county of Hamilton, and of the second ward of said city, and that he was then and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never been engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof, and he possessed all the other qualifications required by law for a Member of the House of Representatives of the United States of America, including the qualifications above set forth;

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement, the said Harry Coons, John Otto, Joseph Miller, Bird Fisher, Jessie Bell, William Cooper, Edgar Smith, George Fowler, and James Cole, and said other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten and intimidate certain citizens of the United States, to wit, each and all of the qualified electors who might actually vote at said election, in each of the voting precincts of the said first congressional district, and each of the voting precincts of the State of Ohio, and that said qualified electors can not now, and could not ever, all be to the grand jurors identified each by his individual name, and such of said electors as can or could be so identified are too numerous to list by name in this indictment without unreasonably lengthening the same, and are so numerous as that it would require an un-

12 reasonable prolongation of the investigations by this grand jury to so identify them—in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States, to wit:

First. The right to have the votes and ballots for presidential electors, United States Senators and Representatives in Congress in said congressional district cast in their respective precincts at said election confined to the votes and ballots of legal and qualified voters of said precincts.

Second. The right to have the votes and ballots cast and counted at said election in said precincts for presidential electors, United States Senators and Representatives in Congress from said congressional district confined to those cast by electors who had not been bribed and who had not sold their votes.

Third. The right to have each lawful vote and ballot for presidential electors, United States Senators, and Representative in Congress at said election counted to its full strength, unaffected and unimpaired by the casting of votes in said precincts by men who had

been bribed and accepted money therefor and by the counting of said votes or any thereof.

Fourth. The right to have the election boards in said election precincts accept and receive only lawful votes cast thereat, and to make a true, correct, and accurate count and return covering only the lawful votes cast by qualified voters for presidential electors, United States Senators, and Representatives in Congress from said district by then and there bribing a large number of otherwise qualified voters at said election and promising them in advance of their voting sums of money to vote and cast their ballots in said precincts at
13 said election for presidential electors, United States Senator and Representative in Congress from said congressional district, and by causing the election boards in said precincts to accept and receive said illegal votes and make an untrue, incorrect and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return, which men so bribed and purchased included Joseph Miller, Bird Fisher, Jessie Bell, William Cooper, Edgar Smith, George Fowler, and James Cole, and other persons whose names are to the grand jurors unknown.

That in pursuance of said conspiracy, and to effect the object thereof, the defendants injured each and all of the qualified electors aforesaid; and as so planned, bribed, and purchased the votes of otherwise qualified voters at said election, to wit: Joseph Miller, Bird Fisher, Jessie Bell, William Cooper, Edgar Smith, George Fowler, and James Cole and other persons whose names are to the grand jurors unknown, and promised and agreed in advance of their voting to pay them money therefor; and caused them to vote and cast their ballots in said precincts for presidential electors, United States Senator, and Representative in Congress from said district, and caused the election boards in said precincts to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

14 Second count (section 19, Penal Code). And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that, on the seventh day of November, 1916, a general election was held in the State of Ohio, under the laws thereof and under the laws of the United States for the election, among others, of twenty-four presidential electors and a United States Senator for said State and of a Representative in the Congress of the United States from the first congressional district of said State, which said congressional district then included a part of Hamilton County in said State.

That at said election James E. Campbell, Judson Harmon, Alfred Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. Laughlin, Thomas D. Wallace, W. W. Wol-

ford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, among others, were candidates for presidential electors, and Atlee Pomerene, among others, was a candidate for Representative in the Congress of the United States from the said congressional district.

That each and all of the said candidates for presidential electors and for the office of United States Senator, and for the office for Representative in the Congress of the United States, had been theretofore regularly and lawfully chosen and nominated to be such candidates at a primary election next preceding the said general election, and held under the laws of the State of Ohio.

That at the time when said and all of said candidates were so chosen and nominated and continuously thereafter until and including the said seventh day of November, 1916, each and every one thereof was duly qualified under the Constitution and laws
15 of the United States and of the State of Ohio to be a candidate, each for the particular office for which he was chosen and nominated and, likewise, duly qualified to hold such office.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present, that Harry Coons, John Otto, Joseph Miller, Bird Fisher, Jessie Bell, William Cooper, Edgar Smith, George Fowler, and James Cole, each late of the said Hamilton County and of the said congressional district, and being hereinafter referred to together as defendants, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including the said seventh day of November, 1916, at and within the said county of Hamilton, and at and within the said congressional district, in the Western Division of the Southern District of Ohio, each then and there well knowing all the premises aforesaid, unlawfully and feloniously did conspire, combine, confederate and agree together, and with other persons to the said grand jurors unknown, to injure and oppress certain citizens of the said State and of the United States in the free exercise and enjoyment of certain rights and privileges secured to them respectively by the Constitution and laws of the United States; that is to say, the right and privilege appertaining to said several candidates, and to all the legally qualified voters at said election voting in said congressional district (the latter forming a class of persons not capable of individual designation).

(First), of having none of such legally qualified voters unlawfully or fraudulently prevented from voting in said congressional district at said election for such candidates for presidential electors, United States Senator, and Representative as they chose to vote for;

(Second), of having only legal votes cast in said congres-
16 sional district at said election for any candidate for presidential elector, United States Senator, or Representative in

the Congress of the United States, and accepted, received, counted and returned by the election boards of the said county; and

(Third), of having such election determined by votes not influenced by bribery, fraud, or the wrongful use of money.

And, that a description of the means and methods whereby said citizens were so to be injured and oppressed in the free exercise and enjoyment of their said rights and privileges by the said defendants is as follows, to wit:

Said defendants in order fraudulently to favor certain other candidates for the said offices at said election, to wit, U. G. Danman, Edwin Jones, Max Burgheim, George McG. Morris, Lyburn T. Palmer, David Oldhan, Samuel A. Rennolet, Newton P. Foster, John M. Mulford, Jacob W. Byers, Solon O. Richardson, John B. Lindsey, Barton Walters, Albert E. Sarain, Sol M. Wolf, N. S. Everhard, Charles L. Casey, John A. Fouts, Wilson Bradrick, Avery C. Jones, Edward O. Whitney, Edward W. Horn, Harry L. Vail, and W. W. Hall, as candidates for presidential electors;

Myron T. Herrick, as candidate for United States Senator, and

Nicholas Longworth, as candidate for Representative in the Congress of the United States, and to secure the election of such other candidates, instead of the election of the candidates hereinbefore first named, without regard to the true preference and choice of said legally qualified voters of said congressional district, unlawfully were to prevent, by force, intimidation, and fraud to be used and practiced upon them by said defendants, as many of the said legally qualified voters of said congressional district who were desirous of voting for the candidates first above mentioned, from voting at the said election for those candidates, as said defendants could
17 prevent by those means; and were to procure, by bribery, payment, and promise in advance of or at said election of payment of money to them for so doing, others of said legally qualified voters desirous of voting for the candidates first above mentioned, to vote at said election for said other candidates instead of said candidates first above named, and thereby procure the acceptance, receipt, counting and returning in due course by said election boards of said congressional district, of such illegal votes and of such votes so influenced by bribery, fraud, and improper use of money, as aforesaid.

And so the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do say that said Harry Coons, John Otto, Joseph Miller, Bird Fisher, Jessie Bell, William Cooper, Edgar Smith, George Fowler, and James Cole, throughout the period of time, at the place, and in manner and form aforesaid, unlawfully and feloniously did conspire to injure and oppress citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States;

Against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided.

Third count (section 37, Penal Code). The grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and pre-

sent that Harry Coons, John Otto, Joseph Miller, Bud Fisher, Jessie Bell, William Cooper, Edgar Smith, George Fowler, and James Cole, together with other persons whose names are to the grand jurors unknown, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including the seventh day of November, 1916, in Hamilton County, within the State of Ohio, and within the Western Division of the Southern District of Ohio, and within the jurisdiction of the above-entitled court, did feloniously conspire, combine, confederate, and agree together and with other persons whose names are to the grand jurors unknown to defraud the United States of America in the manner and for the purposes as follows:

First, by perverting and obstructing, and corruptly administering and procuring to be corruptly administered, and maladministering and causing to be maladministered, and by committing and causing to be committed, wilful frauds upon each of the following sections of the Constitution of the United States, and upon each of the following laws of the United States, to wit:

(a) Article 2, section 1, of the Constitution of the United States, providing for the election of the President and Vice President of the United States.

(b) The twelfth amendment to said Constitution, providing for the election of President and Vice President of the United States;

(c) The seventeenth amendment to said Constitution, providing for the election of Senators by direct vote.

(d) Article 1, section 2, of said Constitution, providing for the election of Representatives in the Congress of the United States of America.

(e) Article 1, section 4, of said Constitution, providing for the time, place, and manner of holding elections for Senators and Representatives of the United States.

(f) An act of Congress of the United States, entitled "An act providing a temporary method of conducting the nomination and election of United States Senators," approved June 4th, 1914.

Second, by denying to and preventing the enjoyment by the United States of America of certain governmental rights and functions to it then and there belonging, namely:

(a) The right and function to have the election of candidates for presidential electors, United States Senators, and Representatives in the Congress of the United States of America determined by the votes of voters who have not been bribed.

(b) The right and function to have the election boards accept, receive, count, and return the legal, and only the legal, votes cast by qualified voters for presidential electors, United States Senators, and Representatives in the Congress of the United States.

(c) The right and function to have all qualified voters vote for presidential electors, United States Senators, and Representatives in the Congress of the United States without unlawful interference and without intimidation.

Third, by obtaining from the governor of the State of Ohio a certificate of election, sealed with seal of, and attested by the secretary of state of said State, certifying that at the general election held on Tuesday, November seventh, A. D. nineteen hundred and sixteen, at which presidential electors and a United States Senator for the State of Ohio and a Representative in the Congress of the United States for the first congressional district of the State of Ohio were voted for, chosen, and elected, one Nicholas Longworth, whom they intended as a part of said conspiracy to elect by fraud and illegality, and contrary to the laws of said State of Ohio and the Constitution and laws of the United States, in the manner hereinafter set out, was regularly elected a Representative in the Congress of the United States from the first congressional district in said State at said election, and in accordance with the laws of said State and the Constitution and laws of the United States of America; and by causing said Nicholas Longworth to present said certificate of election to the House of Representatives of the United States of America, and to the Clerk of the last preceding House of Representatives of
20 the United States of America, before the first meeting of the Sixty-fourth Congress of the United States, in order that the said Nicholas Longworth should have his named placed on the roll of the Representatives elected in said body.

Fourth, by forcing upon the United States of America and upon the House of Representatives of the Congress thereof, as a duly elected member of said House of Representatives, the said Nicholas Longworth, and thereby securing for him, the said Nicholas Longworth, the privileges, immunities, and emoluments of a member of the said House of Representatives, including the statutory pay of seventy-five hundred dollars per annum provided by law as the compensation for the yearly service of any duly elected member of said House of Representatives.

Fifth, by voting and causing to be voted for candidates for presidential electors, and for candidates for United States Senators, and for a candidate for Representative in Congress at said election, in the various election precincts of the first congressional district, Hamilton County, in the said State of Ohio, a large number of persons to be thereafter chosen by the said defendants, who did not or would not then have or possess the qualifications for electors required by the seventeenth amendment, and by article 1, section 2, of the Constitution of the United States of America, and by the laws of the United States of Ohio, governing the qualifications of electors at said election, with full knowledge upon the part of said defendants, and a each of them, that the said persons so to be voted and caused to be voted, as aforesaid, did not and would not then have or possess the requisite qualifications for electors at said election.

Sixth, by corruptly purchasing and debauching the said election by bribing and buying any men they, the said defendants, could bribe and buy, which said men so to be bought, bribed, and pur-
21 chased were to be chosen and selected by said defendants in the various precincts of the first congressional district of

said Hamilton County, and by procuring said men to sell their votes therein for presidential electors, United States Senator, and said Representative in Congress and by causing such men, when so bought, bribed, and purchased, to vote in said county for presidential electors, United States Senator, and said Representative in Congress.

Seventh, by causing the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect and inaccurate return of the votes cast therein, by including said illegal votes in said count and return.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterward, to wit, on the seventh day of November, in the year of our Lord, one thousand nine hundred and sixteen, in pursuance of and in furtherance of an in execution of and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation and agreement aforesaid, said John Otto procured the said defendant, Joe Miller, a registered voter in precinct F of the eighteenth ward of the city of Cincinnati and in the first congressional district of Ohio to vote the straight Republican ticket at said election and then and there and at the same time instructed the said Joe Miller how to mark his ballot to vote said Republican ticket; and that the said defendant, John Otto, then and there and at the same time instructed and promised the said defendant, Joe Miller, that after he had voted in accordance with said instructions he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of said conspiracy said de-
22 fendant, Joe Miller, marked his ballot so as to vote the straight Republican ticket and so cast the same; and after having cast the said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted in accordance with said instructions and agreement, the said Joe Miller met the said defendant, John Otto, in close proximity to the voting place in said ward and precinct and then and there in accordance with said agreement and in furtherance of said conspiracy and to effect the object thereof the said John Otto paid the said defendant, Joe Miller, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterward, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of and in execution of and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation and agreement aforesaid, said John Otto procured the said defendant, Bird Fisher, a registered voter in precinct F of the eighteenth ward of the city of Cincinnati and in the first congressional district of Ohio to vote the straight Republican ticket at said election and then and there and at the same time instructed the said Bird Fisher how to mark his ballot to vote said Republican ticket; and that the said defendant, John Otto, then and there and at the

same time instructed and promised the said defendant, Bird Fisher, that after he had voted in accordance with said instructions he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of said conspiracy said defendant, Bird Fisher, marked his ballot so as to vote the straight Republican ticket and so cast the same; and after having cast the said ballot and
23 in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted in accordance with said instructions and agreement the said Bird Fisher met the said defendant, John Otto, in close proximity to the voting place in said ward and precinct and then and there in accordance with said agreement and in furtherance of said conspiracy and to effect the object thereof the said John Otto paid the said defendant, Bird Fisher, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterward, to-wit, on the seventh day of November, in the year of our Lord, one thousand nine hundred and sixteen, in pursuance of and in furtherance of and in execution of and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid, said John Otto procured the said defendant, Edgar Smith, a registered voter in precinct F of the eighteenth ward of the city of Cincinnati and in the first congressional district of Ohio, to vote the straight Republican ticket at said election and then and there and at the same time instructed the said Bird Fisher how to mark his ballot to vote the said Republican ticket; and that the said defendant, John Otto, then and there and at the same time instructed and promised the said defendant, Edgar Smith, that after he had voted in accordance with said instructions he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of said conspiracy said defendant, Edgar Smith, marked his ballot so as to vote the straight Republican ticket and so cast the same; and after having cast the said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted in accordance with said instruc-
24 tions and agreements the said Edgar Smith met the said defendant, John Otto, in close proximity to the voting place in said ward and precinct and then and there in accordance with said agreement and in furtherance of said conspiracy and to effect the object thereof the said John Otto paid the said defendant, Edgar Smith, the sum of dollar.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

STUART R. BOLIN,
United States Attorney.

(Endorsement:) Indictment. Violations of sections 19 and 37, Penal Code. A true bill.

J. L. CLARK, *Foreman.*

25 And afterwards, to wit, on the 22nd day of May, A. D. 1917, came the defendants, Harry Coons and John Otto, by their attorneys, and filed in the clerk's office of said court a certain demurrer in this cause, which said demurrer is clothed in the words and figures following, to wit:

Demurrer.

In the District Court of the United States of America for the Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
HARRY COONS AND JOHN OTTO, DEFENDANTS. } No. 1138.

Demurrer of Harry Coons and John Otto to the indictment.

Now come the defendants, Harry Coons and John Otto, and demur to the indictment herein and to each and every count thereof for the reason that the said indictment and the several counts thereof do not state facts sufficient to charge offenses against the laws of the United States of America.

Defendants further demur to each of the several counts hereof by reason of defects apparent therein, the particulars of said defects in said counts being as follows, to wit:

First and second counts.

Defendants demur to the first and second counts of said indictment for the reason that the same do not state facts sufficient to charge an offense against the laws of the United States of America in the following particulars, to wit:

First. Because it appears from the allegations of said counts that the various rights and privileges therein set forth alleged to be
26 the rights and privileges of James E. Campbell and other alleged candidates for presidential electors, Atlee Pomerene, alleged candidate for Senator of the United States from the State of Ohio, Edward Brink, alleged candidate for Member of the House of Representatives of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the State of Ohio and each and all of the qualified electors in each of the voting precincts of the State of Ohio, are not secured to them or either of them by the Constitution of the United States.

Second. Because it does not appear from the allegations of said counts that James E. Campbell and other alleged candidates for presidential electors, Atlee Pomerene, alleged candidate for Senator of the United States from the State of Ohio, Edward Brink, alleged candidate for Member of the House of Representatives

of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the State of Ohio, and each and all of the qualified electors in each of the voting precincts of the State of Ohio could have been injured, oppressed, threatened, or intimidated in the free exercise and enjoyment of any right or privilege secured to them or either of them by the Constitution or laws of the United States by reason of said alleged conspiracy.

Third. Because said counts fail to set forth any offense committed against the laws of the United States, but the offense sought to be alleged therein, if any is so described, was an offense against the laws of the State of Ohio.

Fourth. Because the said counts and each of them show that this court has no jurisdiction to try and punish the alleged offenses therein described.

27 Fifth. Because in other particulars said counts, and each of them, fail to describe any offense against the laws of the United States.

Third count.

Defendants demur to the third count of said indictment for the reason that the same does not state sufficient to charge an offense against the laws of the United States of America in the following particulars, to wit:

First. Because the allegations of said count do not describe a conspiracy either to commit an offense punishable by the laws of the United States or to defraud the United States in any manner or for any purpose.

Second. Because the offense therein set forth, if the same be an offense, is not an offense against the United States, but against the State of Ohio.

Third. Because the United States can not be defrauded in any manner or for any purpose by the alleged conspiracy of the defendants as set forth in said count.

Fourth. Because the United States can not be defrauded in any manner or for any purpose by any of the alleged purposes of the defendants alleged to have been the results sought to be attained by said conspiracy.

Fifth. Because the alleged overt acts described in said counts could not in any manner or for any purpose defraud or tend to defraud the United States.

Sixth. Because in other particulars said count fails to describe any offense against the laws of the United States.

SHERMAN T. MCPHERSON,
JOHN R. HOLMES,
FROOME MORRIS,
M. MULLER,
Attorneys for Defendants.

28 And afterwards, to wit, on the 22nd day of May, A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to wit:

Entry 12–332.

District Court of the United States of America, Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs. Entry. No. 1138.
HARRY COONS ET AL., DEFENDANTS.

This day this cause came on to be heard on the indictment and the demurrer thereto, and being argued by counsel and the court being fully advised in the premises, finds it has no jurisdiction of the matters and things charged in said indictment, and it is therefore ordered, adjudged, and decreed that said demurrer be, and it is hereby, sustained and the defendants and each of them be, and they are hereby, discharged from further attendance upon this court, to all of which the United States, by its counsel, excepts.

HOLLISTER, *Judge.*

And afterwards, to wit, on the 19th day of June, A. D. 1917, the following petition for writ of error was filed in the clerk's office of said court:

Petition for writ of error.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
v.
HARRY COONS, JOHN OTTO, JOSEPH MILLER, Bird Fisher, Jessie Bell, James Cole, William Cooper, Edgar Smith, and George Fowler. } No. 1138. Petition for writ of error.

29 Petition for writ of error.

Now comes the United States of America, plaintiff herein, and says that on or about the twenty-second day of May, 1917, this court entered a judgment herein against the plaintiff and in favor of the defendants, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignments of error which is filed with this petition.

Wherefore, the United States of America, plaintiff herein, prays that a writ of error may issue in its behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcription of the record of the proceedings and papers

in this cause duly authenticated may be sent to the said Supreme Court of the United States.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

And afterward, to wit, on the 19th day of June, A. D. 1917, the following assignment of errors was filed in the clerk's office of said court:

Assignment of errors.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, plaintiff, *v.* HARRY COONS, JOHN OTTO, Joseph Miller, Bird Fisher, Jessie Bell, James Cole, William Cooper, Edgar Smith, and George Fowler, defendants.	No. 1138.	Assignment of errors.

The plaintiff in this action, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers were committed upon the trial of this cause, to wit:

I. The court erred in its decision and judgment sustaining the demurrer to the indictment and each count thereof.

II. (a) The court erred in its decision and judgment sustaining the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment sustaining the demurrer to the second count of said indictment.

III. (a) The court erred in its construction of the statute upon which the first count of said indictment was based, and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said first count of said indictment.

(b) The court erred in its construction of the statute upon which the second count of said indictment was based, and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said second count of said indictment.

IV. (a) The court erred in its decision and judgment in not overruling the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment in not overruling the demurrer to the second count of said indictment.

V. The court erred in its decision and judgment in not overruling the demurrer to said indictment and to each count thereof.

For these reasons the plaintiff, the United States of America, asks that this case be reviewed, and that such judgment be rendered in

the Supreme Court of the United States as should have been rendered in the court below, and that such action be taken as will protect the rights of the plaintiff in the premises.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

And afterwards, to-wit, on the 19th day of June, A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to-wit:

Entry 12–354.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA,
vs.
HARRY COONS, JOHN OTTO, JOSEPH MILLER, BIRD Fisher, Jessie Bell, James Cole, William Cooper, Edgar Smith, and George Fowler. | Entry No. 1138.

Now comes the United States attorney on behalf of the plaintiff and presents for allowance a petition for a writ of error and assignments of error accompanying same, upon consideration of which the court hereby allows said petition and orders a writ of error to the Supreme Court of the United States.

HOLLISTER,
United States District Judge, S. D. O.

22 And afterwards, to-wit, on the 27th day of June, A. D. 1917, the following stipulation was filed in the clerk's office of said court:

Stipulation.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
HARRY COONS, JOHN OTTO, JOSEPH MILLER, Bird Fisher, Jessie Bell, James Cole, William Cooper, Edgar Smith, and George Fowler, defendants. | No. 1138. Stipulation.

It is hereby agreed and stipulated that the record in this cause, so far as the undersigned are concerned, shall consist of the following:
Indictment.
Demurrer to indictment.
Opinion of court on demurrer.

Order sustaining demurrer.
Petition for writ of error.
Assignments of error and order allowing writ.
The clerk is therefore requested to prepare a transcript of the foregoing pleadings and papers to be filed in the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
By STUART R. BOLIN,
United States Attorney.
Per JAMES R. CLARK,
Assistant U. S. Attorney.
HARRY COONS and JOHN OTTO,
By JOHN R. HOLMES,
SHERMAN T. MCPHERSON,
FROOME MORRIS,
M. MULLER.

* * * * * * *

51 United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA,
vs.
HARRY COONS ET AL. } No. 1138.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

I, B. E. Dilley, clerk of the District Court of the United States within and for the district and division aforesaid, do hereby certify that the foregoing is a true and correct transcript of the opinion of the court and of those portions of the record in the above-entitled cause, designated in the stipulation filed therein on June 27, 1917, as the same remain of record and on file in the office of the clerk of said court, and that the same constitutes the return to the annexed writ of error.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said court at the city of Cincinnati, Ohio, this 11th day of July, A. D. 1917.

[SEAL.]

B. E. DILLEY, *Clerk.*
By HARRY F. RABE, *Deputy.*

52 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the District Court of the United States for the Southern District of Ohio, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between the United States of America,

plaintiff, and Harry Coons, John Otto, Joseph Miller, Bird Fisher, Jessie Bell, James Cole, William Cooper, Edgar Smith, and George Fowler, defendants, a manifest error hath happened, to the great damage of the said the United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Edward D. White, Chief Justice of the United States, the 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.] B. E. DILLEY,
Clerk of the District Court of the United States for the Southern District of Ohio.
By HARRY F. RABE, *Deputy.*

Allowed by—
H. C. HOLLISTER,
Judge of the District Court of the United States for the Southern District of Ohio.

53 UNITED STATES OF AMERICA, *ss:*

To Harry Coons, John Otto, Joseph Miller, Bird Fisher, Jessie Bell, James Cole, William Cooper, Edgar Smith, and George Fowler, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the Southern District of Ohio, Western Division, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

H. C. HOLLISTER,
District Judge of the United States for the Southern District of Ohio.

54 On this 11th day of July, in the year of our Lord one thousand nine hundred and seventeen, personally appeared John F. Burns, deputy U. S. marshal, before me, the subscriber, Stephen H. Waters, notary public, Hamilton County, Ohio, and makes oath that he delivered a true copy of the within citation to Joseph Miller, Bird Fisher, James Cole, William Cooper, and Edgar Smith.

M. DEVANNEY,
U. S. Marshal, S. D. O.
JOHN F. BURNS, *Deputy.*

Sworn to and subscribed the 11th day of July, A. D. 1917.

[SEAL.] STEPHEN H. WATERS,
Notary Public, Hamilton County, Ohio.

CINTI., *June 23, 1917.*

We acknowledge service on the within citation as to Harry Coons and John Otto.

JOHN R. HOLMES,
SHERMAN F. MCPHERSON,
FROOME MORRIS,
M. MULLER,
Attys. for defts. above named.

Marshal's fees: 5 services, $10.00.

55 (Indorsed:) No. ——, United States District Court, Southern District of Ohio, Western Division.

(Indorsement on cover:) File No. 26044, S. Ohio, D. C. U. S. Term No. 577. The United States of America, plaintiff in error, vs. Harry Coons, John Otto, Joseph Miller, et al. Filed July 19th, 1917. File No. 26044.

○

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 578.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

WILLIAM FARRELL, PETER M. LONG, JOHN LONG, ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1 Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
WILLIAM FARRELL, PETER M. LONG, JOHN LONG, EUGENE Sheridan, Thomas Ellis, George Hermann, Charles E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns, and William Kiser, defendants in error. No. ——.

Transcript.

Error to the District Court of the United States for the Western Division of the Southern District of Ohio.

STUART R. BOLIN, Columbus, O.,
U. S. Attorney, S. D. O.
JAMES R. CLARK, Cincinnati, O.,
Asst. U. S. Atty. S. D. O.
Attorneys for plaintiff in error.
JOHN R. HOLMES, Cincinnati, O.,
SHERMAN T. MCPHERSON, Cincinnati, O.,
FROOME MORRIS, Cincinnati, O.,
M. MULLER, Cincinnati, O.,
Attorneys for certain defendants in error.

(Indorsed:) Office of the Clerk Supreme Court U. S. Received July 19, 1917.

2 No. 1139.

UNITED STATES DISTRICT COURT,
Southern District of Ohio, Western Division, ss:

In the District Court of the United States within and for the district and division aforesaid. Present: The Honorable Howard C. Hollister, judge. Among the proceedings had were the following, to-wit:

THE UNITED STATES OF AMERICA
vs.
WILLIAM FARRELL, PETER M. LONG, JOHN LONG, EUGENE Sheridan, Thomas Ellis, George Hermann, Charles E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns, and William Kiser. No. 1139.

Indictment.

Be it remembered, that, to-wit: on the twenty-fifth day of January, in the year of our Lord one thousand nine hundred and seventeen, came the grand jurors of the United States of America, within and for the Western Division of the Southern District of Ohio, and presented to the court their certain bill of indictment herein, which said bill of indictment is clothed in the words and figures following, to-wit:

3 No. 1139.

In the District Court of the United States of America for the Southern District of Ohio, Western Division. Of the October term, in the year nineteen hundred and sixteen.

SOUTHERN DISTRICT OF OHIO,
Western Division, ss:

Count One—Section 19, Penal Code.—The grand jurors for the United States of America, empaneled and sworn in the District Court of the United States for the Western Division of the Southern District of Ohio, at the October term thereof, in the year nineteen hundred and sixteen, and inquiring for that division and district, upon their oaths and affirmations, charge and present that:

William Farrell, Peter M. Long, John Long, Eugene Sheridan, Thomas Ellis, George Hermann, Charles E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns, and William Kiser, together with other persons whose names are to the grand jurors unknown, throughout the period of time from October 1st, nineteen hundred and sixteen, to and including November seventh, nineteen hundred and sixteen, in Hamilton County, within the State of Ohio, and within the Western Division of the Southern District of said State of Ohio, and within the jurisdiction of the above-entitled court, did feloniously con-
4 spire, combine, confederate, and agree together, and with other persons whose names are to the grand jurors unknown, to injure, oppress, threaten, and intimidate certain citizens of the United States, to wit:

James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, and each of them, in the free exercise and enjoyment of cetrain rights and privileges secured to them

and each of them by the Constitution and laws of the United States, to wit:

First, of being candidates for presidential electors from the State of Ohio at a general election which was to be, and, in fact, was, held in the State of Ohio, and in the first congressional district thereof, and on the said seventh day of November, nineteen hundred and sixteen, at which time presidential electors for the State of Ohio were to be, and in fact were, voted for, chosen and elected, and at which time a United States Senator for the State of Ohio was to be, and in fact was, voted for, chosen, and elected, and at which time a Representative in the Congress of the United States of America, in said first congressional district of Ohio, was to be, and in fact was, voted for, chosen, and elected.

Second, of having qualified voters appear at the polls and vote at said election for presidential electors.

Third, of having only qualified voters vote at said election for presidential electors.

5 Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for presidential electors.

Fifth, of having their election or rejection decided and determined by voters who had not been bribed, and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal and only the legal votes cast by qualified voters for presidential electors.

(First), by then and there bribing a large number of otherwise qualified voters at said election and promising them in advance of their voting sums of money to vote against said presidential electors, and each of them, and to vote in favor of opponents of said presidential electors; and by causing the said voters so bribed and promised, as aforesaid, to purposely and intentionally place and cause to be placed, each respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were George Herrmann, Charles E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, Wm. Kiser, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Wilson, Wm. Davis, John Berns, Robert Wilson, and Frank Kline, and other persons whose names are, as aforesaid, to the grand jurors unknown.

(Second), and also by causing each of said precinct election boards to accept and receive said illegal votes, and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

6 That in pursuance of said conspiracy, and to effect the object thereof, the defendants injured the said James E.

Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, and bribed a large number of otherwise qualified voters, and caused the said illegal and wrongul votes of Charles E. Halsey, George Herrmann, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neiliss, Henry Borehers, Lawrence Gordon, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Rob't Morris, Rob't Wilson, Wm. Davis, John Berns, Wm. Kiser, William Herfurth, Charles Freeman and Frank Kline, and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in said count and return.

That the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F.
7 Dunlavy, John Krause, William F. Thompson, and George Hodges, were candidates for presidential electors at said election, and their names appeared upon the ballots to be voted thereat; that neither was a Senator or Representative or person holding office of trust or profit under the United States on said day or at any time within two years immediately prior thereto; that neither had ever engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that each was at said time, and had been for more than five years immediately prior thereto, a bona fide resident of the State of Ohio; that each on said day was twenty-five years old or upwards, and was at said time a male citizen of the United States, and each was a resident voter of a ward and precinct within the State of Ohio, in which wards and precincts they had respectively resided for more than thirty days immediately prior to said election; that each was a qualified voter and entitled to vote at said election; that each possessed all the qualifications required by law for presidential electors, including the qualifications above set out; that the name of each appeared upon the ballot to be voted for at said election;

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement, the said George Herrmann, Charles E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John

8 Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, and Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns, William Kiser, and other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate a certain citizen of the United States, to wit, Atlee Pomerene, in the free exercise and enjoyment of certain rights and privileges secured to him by the Constitution and laws of the United States, to wit:

(First), of being a candidate for United States Senator from the State of Ohio at said election.

(Second), of having qualified electors appear at the polls and vote at said election for United States Senator.

(Third), of having only qualified voters vote at said election for United States Senator.

(Fourth), of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for United States Senator.

(Fifth), of having his election or rejection decided and determined by voters who had not been bribed and by votes which had not been purchased.

(Sixth), of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal and only the legal votes cast by qualified voters for United States Senator.

First. By then and there bribing a large number of otherwise qualified voters at said election and promising them in advance of their voting sums of money to vote against the said Atlee Pomerene,

9 and to vote for an opponent of said Atlee Pomerene and by causing the said voters so bribed and promised as aforesaid to purposely and intentionally place and cause to be placed, each respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were George Herrmann, Charles E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, and Frank Kline, and other persons whose names are to the grand jurors unknown; and also

Second. By causing each of said precinct election boards to accept and receive said illegal votes, and to make an untrue, incorrect and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy, and to effect the object thereof, the defendants feloniously injured the said Atlee Pomerene, and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of George Herrmann, Charles E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William

Herfurth, Charles Freeman and Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, and William Kiser, and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect and inaccurate count and return of the votes cast at said election, by including said illegal votes in said count and return.

10 That the said Atlee Pomerene was a candidate for United States Senator, from the State of Ohio, at said election; that his name appeared upon the ballots to be voted for at said election for said office.

That on said day the said Atlee Pomerene was more than thirty years of age, and was, and for more than nine years last past had been, a citizen of the United States, and a resident and inhabitant of the State of Ohio and of the city of Canton, in the county of Stark, and of the second ward of said city, and that he was then and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof, and that he possessed all the qualifications required by law for United States Senator, including the qualifications above set forth.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation and agreement, the said William Farrell, Peter M. Long, John Long, Eugene Sheridan, Thomas Ellis, George Herrmann, Charles E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns, William Kiser and said other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate and agree together to injure, oppress, threaten and intimidate a certain citizen of the United States, to wit: Edward H. Brink, in the free exercise and enjoyment of rights and privileges secured to him by the Constitution and laws of the United States, to wit:

11 First, of being a candidate for Representative in Congress for the first congressional district of the State of Ohio, at said election.

Second, of having qualified voters appear at the polls and vote at said election for Representative in Congress from said district.

Third, of having only qualified voters vote at said election for Representative in Congress from said district.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for Representative in Congress from said district.

Fifth, of having his election or rejection decided and determined by voters who had not been bribed, and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal, and only the legal, votes cast by qualified voters for Representative in Congress in said congressional district.

(First), by then and there bribing a large number of otherwise qualified voters at said election, and promising them in advance of their voting sums of money to vote against the said Edward H. Brink and in favor of an opponent, and by causing the said voters so bribed and promised as aforesaid to purposely and intentionally place and cause to be placed, each respectively, his own vote in the ballot box at said election, which said voters so agreed to be purchased and bought were George Herrmann, Charles E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, and Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns, William Davis, and other persons whose names are to the grand jurors unknown; and also

12 (Second), by causing each of said precinct election boards to accept and receive illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy and to effect the object thereof the defendants feloniously injured the said Edward H. Brink in the manner so planned as aforesaid, and bribed a large number of otherwise qualified voters, and caused the said illegal and wrongful votes of George Herrman, Charles E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, and Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns, William Davis to be cast and counted at said election, and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in said count and return.

That the said Edward H. Brink was a candidate for a Member of the House of Representatives in the Congress of the United States of America in the first congressional district of the State of Ohio at said election; that his name appeared upon the ballots to be voted for at said election for said office; that on said election day the said Edward H. Brink was more than twenty-five years of age and was, and for more than seven years immediately prior thereto had been, a citizen of the United States and a resident and inhabitant of the State of Ohio and of the city of Norwood, in the county of Ham-

ilton, and of the second ward of said city, and that he was then and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never been engaged in in-
13 surrection or rebellion against the United States or given aid or comfort to the enemies thereof, and he possessed all the other qualifications required by law for a Member of the House of Representatives of the United States of America, including the qualifications above set forth.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement the said William Farrell, Peter M. Long, John Long, Eugene Sheridan, Thomas Ellis, George Herrmann, Charles E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, and Frank Kline, Peter Ames, Frank Young, Adam Lemuel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns, and William Kiser, and said other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate certain citizens of the United States, to wit, each and all of the qualified electors who might actually vote at said election in each of the voting precincts of the said first congressional district, and each and all of the qualified electors at said election in each of the voting precincts of the State of Ohio, and that said qualified electors can not now, and could not ever, all be to the grand jurors identified each by his individual name, and such of said electors as can or could be so identified, are too numerous to list by name in this indictment without unreasonably lengthening the same, and are so numerous as that it would require an unreasonable prolongation of the investigation by this grand jury to so identify them—in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States, to wit:

14 First. The right to have the votes and ballots for presidential electors, United States Senators, and Representatives in Congress in said congressional district cast in their respective precincts at said election confined to the votes and ballots of legal and qualified voters of said precincts.

Second. The right to have the votes and ballots cast and counted at said election in said precincts for presidential electors, United States Senators, and Representatives in Congress from said congressional district confined to those cast by electors who had not been bribed and who had not sold their votes.

Third. The right to have each lawful vote and ballot for presidential electors, United States Senators, and Representative in Congress at said election counted as to its full strength, unaffected and unimpaired by the casting of votes in said precincts by men who

had been bribed and accepted money therefor, and by the counting of said votes or any thereof.

Fourth. The right to have the election boards in said election precincts accept and receive only lawful votes cast thereat and to make a true, correct, and accurate count and return covering only the lawful votes cast by qualified voters for presidential electors, United States Senators, and Representatives in Congress from said district, by then and there bribing a large number of otherwise qualified voters at said election and promising them in advance of their voting sums of money to vote and cast their ballots in said precincts at said election for presidential electors, United States Senator, and Representative in Congress from said congressional district, and by causing the election boards in said precincts to accept and receive said illegal votes and make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return, which men so bribed and purchased included George Herrmann, Charles E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, and Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns, William Kiser, and other persons whose names are to the grand jurors unknown.

That in pursuance to said conspiracy, and to effect the object thereof, the defendants injured each and all of the qualified electors aforesaid; and, as so planned, bribed and purchased the votes of otherwise qualified voters at said election, to wit: George Herrmann, Charles E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, and Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns and William Kiser, and other persons whose names are to the grand jurors unknown, and promised and agreed in advance of their voting to pay them money therefor; and caused them to vote and cast their ballots in said precincts for presidential electors, United States Senator, and Representative in Congress from said district, and caused the election boards in said precincts to accept and receive said illegal votes and to make an untrue, incorrect and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Second count—Section 19, Penal Code.—And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that, on the seventh day of November, 1916, a general election was held in the State of Ohio, under the laws thereof,

16 and under the laws of the United States, for the election, among others, of twenty-four presidential electors and a United States Senator for said State, and of a Representative in the Congress of the United States from the first congressional district of said State, which said congressional district then included a part of Hamilton County in said State.

That at said election James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, among others, were candidates for presidential electors, and Atlee Pomerene, among others, was a candidate for United States Senator, and Edward H. Brink, among others, was candidate for Representative in the Congress of the United States from the said congresional district.

That each and all of the said candidates for presidential electors, and for the office of United States Senator, and for the office of Representative in the Congress of the United States, had been theretofore regularly and lawfully chosen and nominated to be such candidates at a primary election next preceding the said general election, and held under the laws of the State of Ohio.

That at the time when each and all of said candidates were so chosen and nominated, and continuously thereafter until and including the said seventh day of November, 1916, each and every one thereof was duly qualified under the Constitution and laws of the United States and of the State of Ohio to be a candidate, each for the particular office for which he was chosen and nominated, and, likewise, duly qualified to hold such office.

And the grand jurors aforesaid, upon their oaths and
17 affirmations aforesaid, do further present, that William Farrell, Peter M. Long, John Long, Eugene Sheridan, Thomas Ellis, George Herrmann, Charles E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman and Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns, and William Kiser, each late of the said Hamilton County and of the said congressional district, and being hereinafter referred to together as defendants, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including the said seventh day of November, 1916, at and within the said County of Hamilton, and at and within the said congressional district, in the Western Division of the Southern District of Ohio, each then and there well knowing all the premises aforesaid, unlawfully and feloniously did conspire, combine, confederate, and agree together, and with other persons to the said grand jurors unknown, to injure and oppress certain citizens of

the said State and of the United States in the free exercise and enjoyment of certain rights and privileges secured to them respectively by the Constitution and laws of the United States; that is to say, the right and privilege appertaining to said several candidates, and to all the legally qualified voters at said election voting in said congressional district (the latter forming a class of persons not capable of individual designation).

(First), of having none of such legally qualified voters unlawfully or fraudulently prevented from voting in said congressional district at said election for such candidates for presidential electors, United States Senator, and Representative, as they chose to vote for.

(Second), of having only legal votes cast in said congressional district at said election for any candidate for presidential
18 elector, United States Senator, or Representative in the Congress of the United States, and accepted, received, counted, and returned by the election boards of the said county; and

(Third), of having such election determined by votes not influenced by bribery, fraud, or the wrongful use of money.

And that a description of the means and methods whereby said citizens were so to be injured and oppressed in the free exercise and enjoyment of their said rights and privileges by the said defendants is as follows, to-wit:

Said defendants in order fraudulently to favor certain other candidates for the said offices at said election, to-wit, U. G. Denman, Edwin Jones, Max Burgheim, George McG. Morris, Lyburn T. Palmer, David Oldham, Samuel A. Rennolet, Newton P. Foster, John M. Mulford, Jacob W. Byers, Solon O. Richardson, John B. Lindsey, Barton Walters, Albert E. Sartain, Sol. M. Wolf, N. S. Everhard, Charles L. Casey, John A. Fouts, Wilson Bradrick, Avery C. Jones, Edward O. Whitney, Edward W. Horn, Harry L. Vail, and W. W. Hall, as candidates for presidential electors; Myron T. Herrick, as candidate for United States Senator; and Nicholas Longworth, as candidate for Representative in the Congress of the United States, and to secure the election of such other candidates instead of the election of the candidates hereinbefore first named, without regard to the true preferences and choice of said legally qualified voters of said congressional district, unlawfully were to prevent, by force, intimidation and fraud, to be used and practiced upon them by said defendants, as many of the said legally qualified voters of said congressional district who were desirous of voting for the candidates first above mentioned, from voting at the said election for those candidates, as said defendants could prevent by those means; and were to procure by bribery, payment, and promise in
19 advance of or at said election of payment of money to them for so doing, others of said legally qualified voters desirous of voting for the candidates first above mentioned, to vote at said election for said other candidates instead of said candidates first above named, and thereby procure the acceptance, receipt, counting and returning in due course by said election boards of said

congressional district of such illegal votes and of such votes so influenced by bribery, fraud, and improper use of money, as aforesaid.

And so the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do say that said William Farrell, Peter M. Long, John Long, Eugene Sheridan, Thomas Ellis, George Herrman, Charles E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman and Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns, and William Kiser, throughout the period of time, at the place, and in manner and form aforesaid, unlawfully and feloniously did conspire to injure and oppress citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Third count—Section 37, Penal Code.—The grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that William Farrell, Peter M. Long, John Long, Eugene Sheridan, Thomas Ellis, George Herriman, Charles E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, and Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns, and William Kiser, together with other persons whose names are to the grand jurors unknown, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including the seventh day of November, 1916, in Hamilton County, within the State of Ohio, and within the jurisdiction of the above entitled court, did feloniously conspire, combine, confederate, and agree together and with other persons whose names are to the grand jurors unknown, to defraud the United States of America in the manner and for the purposes as follows:

First, by perverting and obstructing and corruptly administering and procuring to be corruptly administered, and maladministering and causing to be maladministered, and by committing and causing to be committed wilful fraud upon each of the following sections of the Constitution of the United States, and upon each of the following laws of the United States, to wit:

(a) Article 2, section 1, of the Constitution of the United States, providing for the election of the President and Vice President of the United States.

(b) The twelfth amendment to the said Constitution, providing for the election of President and Vice President of the United States.

(c) The seventeenth amendment to the said constitution, providing for the election of Senators by direct vote.

(d) Article 1, section 2, of the said Constitution providing for the election of Representatives in the Congress of the United States of America.

(e) Article 1, section 4, of the said Constitution, providing for the time, the place, and manner of holding elections for Senators and Representatives of the United States.

(f) An act of the Congress of the United States, entitled
21 "An act providing a temporary method of conducting the nomination and election of United States Senators," approved June 4th, 1914.

Second, by denying to and preventing the enjoyment by the United States of America of certain governmental rights and functions to it then and there belonging, namely:

(a) The right and function to have the election of candidates for presidential electors, United States Senators, and Representatives in the Congress of the United States of America determined by the votes of voters who have not been bribed.

(b) The right and function to have the election boards accept, receive, count, and return the legal, and only the legal, votes cast by qualified voters for presidential electors, United States Senators, and Representatives in the Congress of the United States.

(c) The right and function to have all qualified voters vote for presidential electors, United States Senators, and Representatives in the Congress of the United States without unlawful interference and without intimidation.

Third, by obtaining from the governor of the State of Ohio a certificate of election, sealed with the seal of and attested by the secretary of state of the said State, certifying that at the general election held on Tuesday, November the seventh, A. D. nineteen hundred and sixteen, at which presidential electors and a United States Senator for the State of Ohio, and a Representative in the Congress of the United States for the first congressional district of the State of Ohio were voted for, chosen, and elected, one Nicholas Longworth, who they intended as a part of said conspiracy to elect by fraud and illegality, and contrary to the laws of the said State of Ohio, and the Constitution and laws of the United States, in the manner hereinafter set forth, was regularly elected a Representative in the Congress of the United States from the first congressional district in the said State at the said election; and
22 in accordance with the laws of the said State and the Constitution and laws of the United States of America, and by causing the said Nicholas Longworth to present said certificate of election to the House of Representatives of the United States of America, and to the clerk of the last preceding House of Representatives of the United States of America, before the first meeting of the Sixty-fourth Congress of the United States, in order that the said Nicholas Longworth should have his name placed upon the roll of the Representatives elected in the said body.

Fourth, by forcing upon the United States of America and upon the House of Representatives of the Congress thereof as a duly elected member of the said House of Representatives the said Nicholas Longworth, and thereby securing for him, the said Nicholas Longworth, the privileges, immunities, and emoluments of a Member of the said House of Representatives, including the statutory pay of seventy-five hundred dollars per annum, provided by law as the compensation for the yearly service of any duly elected member of the said House of Representatives.

Fifth, by voting and causing to be voted for candidates for presidential electors and for candidates for United States Senators and for a candidate for representative in congress at said election, in the various election precincts of the first congressional district, Hamilton County, in the State of Ohio, a large number of persons to be thereafter chosen by the said defendants, who did not or would not then have or possess the qualifications for electors required by the seventeenth amendment, and by article 1, section 2, of the Constitution of the United States of America, and by the laws of the State of Ohio governing the qualifications of electors at said election, with full knowledge upon the part of said defendants, and each of them, that the said persons so to be voted and caused to be voted, as
23 aforesaid, did not and would not then have or possess the requisite qualifications for electors at said election.

Sixth, by corruptly purchasing and debauching the said election by bribing and buying any men they, the said defendants, could bribe, and buy, which said men so to be bought, bribed and purchased were to be chosen and selected by said defendants in the various precincts of the first congressional district of said Hamilton County, and by procuring said men to sell their votes therein for presidential electors, United States Senator, and said Representative in Congress, and by causing such men, when so bought, bribed and purchased, to vote in said county for presidential electors, United States Senator, and said Representative in Congress.

Seventh, by causing the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect and inaccurate return of the votes cast therein, by including said illegal votes in said count and return.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterwards, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of, and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design and purpose of said conspiracy, combination, confederation and agreement aforesaid, said Peter Long procured said defendant Henry Borcher, a registered voter in precinct E, ward 8, of the city of Cincinnati, in the State of Ohio, and in the first congressional district thereof, to vote the straight Republican ticket at said election, and then and there and at the same time and by and with the use of a sample ballot to demonstrate the

same, instructed and procured the said Henry Borchers to mark his ballot by placing an "X" under the design of the eagle on said ballot, and cast the vote of him, the said Henry Borchers, in said ward and precinct, in accordance with said procurement and instruction; that the said Peter Long then and there and at the same time instructed and promised the said Henry Borchers that after he had voted in accordance with said instruction he would be paid money therefor; that pursuant to said instruction and agreement, and in furtherance of said conspiracy, said defendant, Henry Borchers, marked his ballot by placing an "X" in the circle under the design of the eagle displayed thereon, and after having cast his said ballot and in further pursuance of said instruction and agreement and to effect the object of said conspiracy, and immediately after he had voted in accordance with said instruction and agreement, the said Henry Borchers met the said defendant, Peter Long, in close proximity to the voting place in said ward and precinct, and was then and there instructed by the said defendant, Peter Long, to go inside the premises known as 108 Sycamore Street in said city of Cincinnati, and receive the money promised before voting; that, pursuant to said instructions and to effect the object of said conspiracy, this said defendant, Henry Borchers, entered the premises above described and known as No. 108 Sycamore Street, Cincinnati, Ohio, and then and there received from the defendant William Farrell the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterwards, to wit, on the seventh day of November in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design and purpose of said conspiracy, combination, confederation, and agreement aforesaid, said Peter Long procured said defendant Charles Halsey, a registered voter in precinct E, ward 8, of the city of Cincinnati, in the State of Ohio, and in the first congressional district thereof, to vote the straight Republican ticket at said election, and then and there and at the same time, and by and with the use of a sample ballot to demonstrate the same, instructed and procured the said Charles Halsey to mark his ballot by placing an "X" in the circle under the design of the eagle displayed on said ballot, and cast the vote of him, the said Charles Halsey, in said ward and precinct, in accordance with said procurement and instruction; that the said Peter Long then and there and at the same time instructed and promised the said Charles Halsey that after he had voted in accordance with said instruction he would be paid money therefor; that pursuant to said instruction and agreement, and in furtherance of said conspiracy, said defendant, Charles Halsey, marked his ballot, by placing an "X" in the circle under the design of the eagle displayed thereon, and after having cast his said ballot and in further pursuance of said instruction and agreement and to effect the object of said con-

spiracy, and immediately after he had voted in accordance with said instruction and agreement, the said Charles Halsey met the said defendant, Peter Long, in close proximity to the voting place in said ward and precinct, and was then and there instructed by him the said defendant Peter Long to go inside the premises known as Number 108 Sycamore Street in said city of Cincinnati, and receive the money promised before voting; that pursuant to said instruction and to effect the object of said conspiracy, this said defendant, Charles Halsey entered the premises above described and known as No. 108 Sycamore Street, Cincinnati, Ohio, and then and there received from the defendant Peter Long the sum of one dollar.

26 And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterwards, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of, and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid, said John Long procured said defendant, George Wendt, a registered voter in precinct E, ward 8, of the city of Cincinnati, in the State of Ohio, and in the first congressional district thereof, to vote the straight Republican ticket at said election, and then and there and at the same time and by and with the use of a sample ballot to demonstrate the same, instructed and procured the said George Wendt to mark his ballot by placing an "X" under the design of the eagle on said ballot, and cast the vote of him, the said George Wendt, in said ward and precinct, in accordance with said procurement and instruction; that the said John Long then and there and at the same time instructed and promised the said George Wendt that after he had voted in accordance with said instructions he would be paid money therefor; that pursuant to said instructions and agreement, and in furtherance of said conspiracy, said defendant George Wendt marked his ballot by placing an "X" in the circle under the design of the eagle displayed thereon, and after having cast his said ballot and in furtherance pursuance of said instruction and agreement and to effect the object of said conspiracy, and immediately after he had voted in accordance with said instruction and agreement, the said George Wendt met the said defendant John Long in close proximity to the voting place in said ward and precinct, and was then and there instructed by the said defendant John Long to go inside the premises known as No. 108 Sycamore Street in said city of Cincinnati, and receive the money promised before

27 voting; that, pursuant to said instructions and to effect the object of said conspiracy, this said defendant, George Wendt, entered the premises known as No. 108 Sycamore Street, Cincinnati, O., and then and there received from the defendant John Long the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterwards, to wit, on

the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of, and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid, said John Long procured said defendant James Wilson, a registered voter in precinct E, ward 8, of the city of Cincinnati, in the State of Ohio, and in the first congressional district thereof, to vote the straight Republican ticket at said election, and then and there and at the same time and by and with the use of a sample ballot to demonstrate the same, instructed and procured the said defendant James Wilson to mark his ballot by placing an "X" under the design of the eagle on said ballot, and cast the vote of him, the said James Wilson, in said ward and precinct, in accordance with said procurement and instruction; that the said John Long then and there and at the same time instructed and promised the said James Wilson that after he had voted in accordance with said instruction and agreement, and in furtherance of said conspiracy, said defendant, James Wilson, would be paid money therefor; that pursuant to said instruction and agreement, and in furtherance of said conspiracy, said defendant James Wilson marked his ballot by placing an "X" in the circle under the design of the eagle displayed thereon, and after having cast his said ballot
28 and in further pursuance of said instruction and agreement and to effect the object of said conspiracy, and immediately after he had voted in accordance with said instruction and agreement, the said James Wilson met the said defendant, John Long, in close proximity to the voting place in said ward and precinct, and was then and there instructed by the said defendant, John Long, to go inside the premises known as No. 108 Sycamore Street, in said city of Cincinnati, and receive the money promised before voting; that, pursuant to said instructions, and to effect the object of said conspiracy, this said defendant, James Wilson, entered the premises above described and known as No. 108 Sycamore Street, Cincinnati, Ohio, and then and there received from the defendant John Long the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterwards, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of, and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid, said defendant, William Farrell, procured the said defendant, John Seidle, a registered voter in precinct E, ward 8, city of Cincinnati, in the first congressional district of the State of Ohio, to vote the straight Republican ticket at said election and then and there and at the same time instructed the said John Seidle how to mark the ballot to vote said straight Republican ticket; that the said defendant William Farrell, then and there and at the same time instructed the said John Seidle that

after he had voted in accordance with said instruction and agreement he should enter the premises known as No. 108 Sycamore Street, city of Cincinnati, in the State of Ohio, where he would be paid money therefor; that pursuant to said instruction and agreement and in furtherance of said conspiracy said defendant, John Seidle, marked his ballot as instructed and so cast the same and after having cast his said ballo,t and in further pursuance of said instruction and agreement and to effect the object of said conspiracy and immediately after he had voted in accordance with said instructions and agreement the said John Seidle entered the premises above described and known as No. 108 Sycamore Street, Cincinnati, Ohio, and then and there and in accordance with said agreement, and in furtherance of said conspiracy, and to effect the object thereof, and in the presence of the said defendant, William Farrell, the said defendant, John Long, paid this said defendant, John Seidle, the sum of one dollar.

And the grand purors aforesaid, upon their oaths and affirmations, aforesaid, do further charge and present that, afterwards, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of, and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid, the said defendant, Thomas Ellis, procured the said defendant, Charles Freeman, a registered voter in precinct E, ward 8, of the city of Cincinnati, in the State of Ohio, and in the first congressional district thereof, to vote the straight Republican ticket at said election; that the said Thomas Ellis then and there and at the same time instructed and promised the said Charles Freeman that after he had voted in accordance with said instruction he would be paid money therefor; that pursuant to said instruction and agreement and in furtherance of said conspiracy said defendant, Charles Freeman, did so marked his ballot and cast the same so as to vote the straight Republican ticket; that in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted in accordance with said instructions and agreement the said Charles Freeman met the said defendants, Thomas Ellis and William Farrell, in close proximity to the voting place in said ward and precinct, and that in accordance with said agreement and in further pursuance of said conspiracy and to effect the object thereof said defendant, William Farrell, paid this said defendant, Charles Freeman, the sum of one dollar.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

STUART R. BOLIN,
United States Attorney.

(Endorsement:) Indictment, violations of sections 19 and 27, Penal Code. A true bill, J. L. Clark, foreman.

31 And afterwards, to-wit, on the 22nd day of May, A. D. 1917, came the defendants, William Farrell, Peter M. Long, John Long, Eugene Sheridan, and Thomas Ellis, by their attorneys, and filed in the clerk's office of said court a certain demurrer in this cause, which said demurrer is clothed in the words and figures following, to-wit:

Demurrer.

In the District Court of the United States of America for the Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* WILLIAM FARRELL ET AL., DEFENDANTS.	Demurrer of William Farrell et al. to the indictment.

Now comes the defendants, William Farrel, Peter M. Long, John Long, Eugene Sheridan, and Thomas Ellis, and demur to the indictment herein and to each and every count thereof, for the reason that the said indictment and the several counts thereof do not state facts sufficient to charge offenses against the laws of the United States of America.

Defendants further demur to each of the several counts hereof by reason of defects apparent therein, the particulars of said defects in said counts being as follows, to-wit:

First and second counts.

Defendants demur to the first and second counts of said indictment for the reason that the same do not state facts sufficient to charge an offense against the laws of the United States of America in the following particulars, to-wit:

First. Because it appears from the allegations of said counts that the various rights and privileges therein set forth alleged to be the rights and privileges of James E. Campbell and other alleged candidates for presidential electors, Atlee Pomerene, alleged can-
32 didate for Senator of the United States from the State of Ohio, Edward Brink, alleged candidate for Member of the House of Representatives of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the State of Ohio and each and all of the qualified electors in each of the voting precincts of the State of Ohio, are not secured to them or either of them by the Constitution or laws of the United States.

Second. Because it does not appear from the allegations of said counts that James E. Campbell and other alleged candidates for presidential electors, Atlee Pomerene, alleged candidate for Senator of the United States from the State of Ohio, Edward Brink, alleged candidate for Member of the House of Representatives of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the

State of Ohio, and each and all of the qualified electors in each of the voting precincts of the State of Ohio could have been injured, oppressed, threatened, or intimidated in the free exercise and enjoyment of any right or privilege secured to them or either of them by the Constitution or laws of the United States by reason of said alleged conspiracy.

Third. Because said counts fail to set forth any offense committed against the laws of the United States, but the offense sought to be alleged therein, if any is so described, was an offense against the laws of the State of Ohio.

Fourth. Because the said counts and each of them show that this court has no jurisdiction to try and punish the alleged offenses therein described.

Fifth. Because in other particulars, said counts and each of them, fail to describe any offense against the laws of the United States.

33 Third count.

Defendants demur to the third count of said indictment for the reason that the same does not state facts sufficient to charge an offense against the laws of the United States of America in the following particulars, to-wit:

First. Because the allegations of said count do not describe a conspiracy either to commit an offense punishable by the laws of the United States or to defraud the United States in any manner or for any purpose.

Second. Because the offense therein set forth, if the same be an offense, is not an offense against the United States, but against the State of Ohio.

Third. Because the United States cannot be defrauded in any manner or for any purpose by the alleged conspiracy of the defendants as set forth in said count.

Fourth. Because the United States cannot be defrauded in any manner or for any purpose by any of the alleged purposes of the defendants alleged to have been the results sought to be attained by said alleged conspiracy.

Fifth. Because the alleged overt acts described in said counts could not in any manner or for any purpose defraud or tend to defraud the United States.

Sixth. Because in other particulars said count fails to describe any offense against the laws of the United States.

SHERMAN T. MCPHERSON,
JOHN R. HOLMES,
FROMME MORRIS,
M. MULLER,
Attorneys for Defendants.

34 And afterwards, to-wit, on the 22nd day of May A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to-wit:

Entry—12–333.

District Court of the United States of America, Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* WM. FARRELL ET AL., DEFENDANTS.	Entry. No. 1139.

This day this cause came on to be heard on the indictment and the demurrer thereto, and being argued by counsel, and the court being fully advised in the premises finds it has no jurisdiction of the matters and things charged in said indictment, and it is therefore ordered, adjudged, and decreed that said demurrer be and it is hereby sustained, and the defendants and each of them be and they are hereby discharged from further attendance upon this court, to all of which the United States by its counsel excepts.

HOLLISTER, *Judge.*

And afterwards, to-wit, on the 19th day of June A. D. 1917, the following petition for writ or error was filed in the clerk's office of said court:

Petition for writ of error.

United States District Court, Southern District of Ohio, Western Division.

35 THE UNITED STATES OF AMERICA, PLAINTIFF, *v.* WILLIAM FARRELL, PETER M. LONG, JOHN LONG, EUGENE Sheridan, Thomas Ellis, George Herman, Chester E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns and William Kiser.	No. 1139.

Petition for writ of error.

Now comes the United States of America, plaintiff herein, and says that on or about the twenty-second day of May, 1917, this court entered a judgment herein against the plaintiff and in favor of the defendants, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignments of error which is filed with this petition.

Wherefore, the United States of America, plaintiff herein, prays that a writ of error may issue in its behalf to the Supreme Court of the United States for the correction of the errors so complained of and that a transcript of the record of the proceedings and papers in this cause duly authenticated may be sent to the said Supreme Court of the United States.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

And afterwards, to-wit: on the 19th day of June, A. D. 1917, the following assignment of errors was filed in the clerk's office of said court:

36 Assignment of errors.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
v.
WILLIAM FARRELL, PETER M. LONG, JOHN LONG, EUGENE Sheridan, Thomas Ellis, George Herman, Chester E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns, and William Kiser, defendants. | No. 1139.

Assignment of errors.

The plaintiff in this action, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers were committed upon the trial of this cause, to-wit:

I. The court erred in its decision and judgment sustaining the demurrer to the indictment and each count thereof.

II. (a) The court erred in its decision and judgment sustaining the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment sustaining the demurrer to the second count of said indictment.

III. (a) The court erred in its construction of the statute upon which the first count of said indictment was based; and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said first count of said indictment.

(b) The court erred in its construction of the statute upon which the second count of said indictment was based, and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said second count of said indictment.

IV. (a) The court erred in its decision and judgment in
37 not overruling the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment in not overruling the demurrer to the second count of said indictment.

V. The court erred in its decision and judgment in not overruling the demurrer to said indictment and to each count thereof.

For these reasons the plaintiff, the United States of America, asks that this case be reviewed, and that such judgment be rendered in the Supreme Court of the United States as should have been rendered in the court below, and that such action be taken as will protect the rights of the plaintiff in the premises.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

And afterwards, to wit, on the 19th day of June, A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to wit:

Entry—12–355.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA *v.* WILLIAM FARRELL, PETER M. LONG, JOHN Long, Eugene Sheridan, Thomas Ellis, George Herman, Chester E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns, and William Kiser.	Entry. No. 1139.

38 Entry—12–355.

Now comes the United States attorney on behalf of the plaintiff and presents for allowance a petition for a writ of error and assign-

ments of error accompanying same, upon consideration of which the court hereby allows said petition and orders a writ of error to the Supreme Court of the United States.

HOLLISTER,
United States District Judge, S. D. O.

39 And afterwards, to wit, on the 27th day of June, A. D. 1917, the following stipulation was filed in the clerk's office of said court:

Stipulation.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *vs.* WILLIAM FARRELL, PETER M. LONG, JOHN LONG, Eugene Sheridan, Thomas Ellis, George Herman, Chester E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns, and William Kiser, defendants.	No. 1139.

Stipulation.

It is hereby agreed and stipulated that the record in this cause, so far as the undersigned are concerned, shall consist of the following: Indictment, demurrer to indictment, opinion of court on demurrer, order sustaining demurrer, petition for writ of error, assignments of error and order allowing writ.

The clerk is therefore requested to prepare a transcript of the foregoing pleadings and papers to be filed in the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
By STUART R. BOLIN,
United States Attorney.
Per JAMES R. CLARK,
Assistant U. S. Attorney.
WILLIAM FARRELL,
PETER M. LONG,
JOHN LONG,
EUGENE SHERIDAN, and
THOMAS ELLIS,
By JOHN R. HOLMES,
SHERMAN T. MCPHERSON,
FROOME MORRIS,
M. MULLER.

* * * * * * *

18 **United States District Court, Southern District of Ohio, Western Division.**

THE UNITED STATES OF AMERICA
vs.
WILLIAM FARRELL ET AL. } No. 1139.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

I, B. E. Dilley, clerk of the District Court of the United States within and for the district and division aforesaid, do hereby certify that the foregoing is a true and correct transcript of the opinion of the court and of those portions of the record in the above-entitled cause designated in the stipulation filed therein on June 27, 1917, as the same remain of record and on file in the office of the clerk of said court, and that the same constitutes the return to the annexed writ of error.

In witness whereof I have hereunto subscribed my name and affixed the seal of said court at the city of Cincinnati, Ohio, this 11th day of July, A. D. 1917.

[SEAL.]

B. E. DILLEY, *Clerk.*
By HARRY F. RABE, *Deputy.*

19 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the District Court of the United States for the Southern District of Ohio, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between the United States of America, plaintiff, and William Farrell, Peter M. Long, John Long, Eugene Sheridan, Thomas Ellis, George Herman, Chester E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, Frank Kline, Peter Ames, Frank Young, Adam Lammel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns, and William Kiser, defendants, a manifest error hath happened, to the great damage of the said the United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done

therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.] B. E. DILLEY,
Clerk of the District Court of the United States
for the Southern District of Ohio.
By HARRY F. RABE,
Deputy.

Allowed by
H. C. HOLLISTER,
Judge of the District Court of the United States
for the Southern District of Ohio.

60 UNITED STATES OF AMERICA, *ss:*

To William Farrell, Peter M. Long, John Long, Eugene Sheridan, Thomas Ellis, George Herman, Chester E. Halsey, Owen P. McGrevey, George Wendt, James Wilson, John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth, Charles Freeman, Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, Robert Morris, Robert Wilson, William Davis, John Berns, and William Kiser, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the Southern District of Ohio, Western Division, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

H. C. HOLLISTER,
District Judge of the United States
for the Southern District of Ohio.

61 On this 11th day of July, in the year of our Lord one thousand nine hundred and seventeen, personally appeared John F. Burns, deputy U. S. marshal, before me, the subscriber, Stephen H. Waters, notary public, Hamilton County, Ohio, and makes oath that he delivered a true copy of the within citation to John Seidle, William Neillis, Henry Borchers, Lawrence Gordon, William Herfurth,

Charles Freeman, Frank Kline, Peter Ames, Frank Young, Adam Lemmel, Ben Lewis, George Coleman, and William Kiser.

M. DEVANNEY,
U. S. Marshal, S. D. O.
JOHN F. BURNS,
Deputy.

Sworn to and subscribed the 11th day of July, A. D. 1917.
[SEAL.] STEPHEN H. WATERS,
Notary Public Hamilton County, Ohio.
Cint., Ohio, June 23, 1917.

We acknowledge service on the within citation as to William Farrell, Peter M. Long, John Long, and Eugene Sheridan, and Thomas Ellis.

JOHN R. HOLMAN,
SHERMAN T. MCPHERSON,
FROOME MORRIS,
M. MULLER,
Attys. for defts. above named.

(Indorsed:) Marshal's Criminal Docket No. 555. Rec'd July 7, '17.
Marshal's fees: 13 services, $26.00; 41 miles, $2.46; total, $28.46.
(Indorsed:) No. ——. United States District Court, Southern District of Ohio, Western Division.
(Indorsement on cover:) File No. 26045. S. Ohio, D. C. U. S. Term No. 578. The United States of America, plaintiff in error, vs. William Farrell, Peter M. Long, John Long et al. Filed July 19th, 1917. File No. 26045.

○

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 579.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

OSCAR KLAYER, CHARLES HAMBURGER, JOSEPH EMERY ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1 Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
OSCAR KLAYER, CHARLES HAMBURGER, JOSEPH EMERY, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, William Davis, defendants in error. } No. ——.

Transcript.

Error to the District Court of the United States for the Western Division of the Southern District of Ohio.

STUART R. BOLIN, Columbus, O.,
U. S. Attorney, S. D. O.,
JAMES R. CLARK, Cincinnati, O.,
Asst. U. S. Atty., S. D. O.,
Attorneys for plaintiff in error.
JOHN R. HOLMES, Cincinnati, O.,
SHERMAN T. MCPHERSON, Cincinnati, O.,
FROOME MORRIS, Cincinnati, O.,
M. MULLER, Cincinnati, O.,
A. LEE BEATY, Cincinnati, O.,
Attorneys for certain defendants in error.

(Indorsed:) Office of the Clerk Supreme Court U. S. Received Jul. 19, 1917.

2 No. 1140.

UNITED STATES DISTRICT COURT,
Southern District of Ohio, Western Division, ss:

In the District Court of the United States within and for the district and division aforesaid. Present: the honorable Howard C. Hollister, judge. Among the proceedings had were the following, to-wit:

THE UNITED STATES OF AMERICA,
vs.
OSCAR KLAYER, CHARLES HAMBURGER, Joseph Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis. } Indictment. No. 1140.

Be it remembered, that, to-wit, on the twenty-fifth day of January, in the year of our Lord one thousand nine hundred and seventeen, came the grand jurors of the United States of America, within and for the western division of the southern district of Ohio, and

presented to the court their certain bill of indictment herein, which said bill of indictment is clothed in the words and figures following, to-wit:

3 In the District Court of the United States of America for the Southern District of Ohio, Western Division. Of the October term, in the year nineteen hundred and sixteen.

SOUTHERN DISTRICT OF OHIO,
Western Division, ss:

Count One—Section 19, Penal Code.—The grand jurors for the United States of America, empaneled and sworn in the District Court of the United States for the Western Division of the Southern District of Ohio, at the October term thereof, in the year nineteen hundred and sixteen, and inquiring for that division and district, upon their oaths and affirmations, charge and present that Oscar Klayer, Charles Hamburger, Joseph Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, William Davis, together with other persons whose names are to the grand jurors unknown, throughout the period of time from October first, nineteen hundred and sixteen, to and including November seventh, nineteen hundred and sixteen, in Hamilton County, within the State of Ohio, and within the Western Division of the Southern District of said State of Ohio, and within the jurisdiction of the above-entitled court, did feloniously conspire, combine, confederate and agree together, and with other persons whose names are to the grand jurors unknown, to injure, oppress, threaten, and intimidate certain citizens of the United States, to wit:

James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, Willia E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John
4 Krause, William F. Thompson, and George Hodges, and each of them, in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States, to wit:

First, of being candidates for presidential electors from the State of Ohio at a general election which was to be and in fact was held in the State of Ohio and in the first congressional district thereof on said seventh day of November, at which time presidential electors for the State of Ohio were to be and in fact were voted for, chosen, and elected, and at which time a United States Senator for the State of Ohio was to be and in fact was voted for, chosen, and elected, and at which time a Representative in the Congress of the United States of America, in said first congressional district of Ohio, was to be and in fact was voted for, chosen, and elected.

Second, of having qualified voters appear at the poles and vote at said election for presidential electors.

Third, of having only qualified voters vote at said election for presidential electors.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for presidential electors.

Fifth, of having their election or rejection decided and determined by voters who had not been bribed and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal and only the legal votes cast by qualified voters for presidential electors.

First, by then and there bribing a large number of otherwise qualified voters at said election and promising them in advance of
5 their voting sums of money to vote against said presidential electors, and each of them, and to vote in favor of opponents of said presidential electors, and by causing the said voters so bribed and promised as aforesaid to purposely and intentionally place and cause to be placed, each respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Joseph Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, William Davis, and other persons whose names are as aforesaid to the grand jurors unknown.

Second, and also by causing each of said precinct election boards to accept and receive said illegal votes, and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return;

That in pursuance of said conspiracy, and to effect the object thereof, the defendants injured the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of Joseph Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, William Davis, and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and
6 return of the votes cast at said election by including said illegal votes in said count and return;

That the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges were candidates for presidential electors at said election, and their names appeared upon the ballots to be voted thereat; that neither was a Senator or Representative or person holding office of trust or profit under the United States on said day or at any time within two years immediately prior thereto; that neither had ever engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof; that each was at said time, and had been for more than five years immediately prior thereto, a bona fide resident of the State of Ohio; that each on said day was twenty-five years old or upwards, and was at said time a male citizen of the United States, and each was a resident voter of a ward and precinct within the State of Ohio, in which wards and precincts they had respectively resided for more than thirty days immediately prior to said election; that each was a qualified voter and entitled to vote at said election; that each possessed all the qualifications required by law for presidential electors, including the qualifications above set out; that the name of each appeared upon the ballot to be voted for at said election.

7 And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement the said Oscar Klayer, Charles Hamburger, Joseph Emery, Edger E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis and other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate a certain citizen of the United States, to wit, Atlee Pomerene, in the free exercise and enjoyment of certain rights and privileges secured to him by the Constitution and laws of the United States, to wit:

First, of being a candidate for United States Senator from the State of Ohio at said election.

Second, of having qualified electors appear at the polls and vote at said election for United States Senator.

Third, of having only qualified voters vote at said election for United States Senator.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for United States Senator.

Fifth, of having his election or rejection decided and determined by voters who had not been bribed and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal, and only the legal, votes cast by qualified voters for United States Senators.

(First), by then and there bribing a large number of otherwise qualified voters at said election and promising in advance of their voting sums of money to vote against the said Atlee Pomerene,
8 and to vote for an opponent of said Atlee Pomerene, and by causing the said voters so bribed and promised as aforesaid to purposely and intentionally place and cause to be placed, each respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Joseph Emery, Edgar E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis, and other persons whose names are to the grand jurors unknown, and also,

(Second), by causing each of said precinct election boards to accept and receive said illegal votes, and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy, and to effect the object thereof, the defendants feloniously injured the said Atlee Pomerene, and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of Joseph Emery, Edger E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis, and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election, by including said illegal votes in said count and return.

That the said Atlee Pomerene was a candidate for United States Senator from the State of Ohio at said election; that his name appeared upon the ballots to be voted for at said election for said office.

That on said day the said Atlee Pomerene was more than
9 thirty years of age, and was and for more than nine years last past had been a citizen of the United States and a resident and inhabitant of the State of Ohio and of the city of Canton, in the county of Stark, and of the Second Ward of said city, and that he was then and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof, and that he possessed all the qualifications required by law for United States Senator, including the qualifications above set forth.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation

and agreement, the said Oscar Klayer, Charles Hamburger, Joseph Emery, Edgar E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner and William Davis and said other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate and agree together to injure, oppress, threaten and intimidate a certain citizen of the United States, to-wit, Edward H. Brink, in the free exercise and enjoyment of rights and privileges secured to him by the Constitution and laws of the United States, to-wit:

First, of being a candidate for Representative in Congress for the first congressional district of the State of Ohio, at said election.

Second, of having qualified voters appear at the polls and vote at said election for Representative in Congress from said district.

Third, of having only qualified voters vote at said election for Representative in Congress from said district.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted and returned at said election for Representative in Congress from said district.

Fifth, of having his election or rejection decided and determined by voters who have not been bribed and by votes which have not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct and accurate count and return of the legal and only the legal votes cast by qualified voters for Representative in Congress in said congressional district.

(First), by then and there bribing a large number of otherwise qualified voters at said election and promising them in advance of their voting sums of money to vote against the said Edward H. Brink and in favor of an opponent and by causing the said voters so bribed and promised, as aforesaid, to purposely and intentionally place and cause to be placed, each respectively, his own vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Joseph Emery, Edgar E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis, and other persons whose names are to the grand jurors unknown; and also

(Second), by causing each of said precinct election boards to accept and receive illegal votes and to make an untrue, incorrect and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in purchase of said conspiracy, and to effect the object thereof, the defendants feloniously injured the said Edward H. Brink in the manner so planned as aforesaid and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of Joseph Emery, Edgard E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner and William Davis to be cast and counted at said election; and caused the election boards in the various precincts of said congressional district to accept and

receive said illegal votes and to make an untrue, incorrect and inaccurate count and return of the votes cast at said election by including said illegal votes in said count and return.

That the said Edward H. Brink was a candidate for Member of the House of Representatives in the Congress of the United States of America in the first congressional district of the State of Ohio at said election; that his name appeared upon the ballots to be voted for at said election for said office; that on said election day the said Edward H. Brink was more than twenty-five years of age and was, and for more than seven years immediately prior thereto has been, a citizen of the United States, a resident and inhabitant of the State of Ohio and of the city of Norwood, in the county of Hamilton, and of the second ward of said city, and that he was then and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof, and he possessed all the qualifications required by law for a Member of the House of Representatives of the United States of America, including the qualifications above set forth.

And the grand jurors, aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place and as a part of the aforesaid conspiracy, combination, confederation and agreement the said Oscar Klayer, Charles Hamburger, Joseph Emery, Edgar E. Wise, George Brown, Grant Brown, and Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis, and said other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and
12 intimidate certain citizens of the United States, to wit, each and all of the qualified electors who might actually vote at said election in each of the voting precincts of the said first congressional district, and each and all of the qualified electors, at said election in each of the voting precincts of the State of Ohio and that said qualified electors can not now, and could not ever, all be to the grand jurors identified, each by his individual names and such of said electors as can or could be so identified are too numerous to list by name in this indictment without unreasonably lengthening the same and are so numerous as that it would require an unreasonable prolongation of the investigations of this grand jury to so identify them—in the free exercise and enjoyment of certain rights and priviieges secured to them and each of them by the Constitution and laws of the United States, to wit:

First. The right to have the votes and ballots for presidential electors, United States Senator, and Representative in Congress in said congressional district cast in their respective precincts at said election, confined to the votes and ballots of legal and qualified voters of said precincts.

Second. The right to have the votes and ballots cast and counted at said election in said precincts for presidential electors, United

States Senators, and Representatives in Congress from said congressional district confined to those cast by electors who had not been bribed, and who had not sold their votes.

Third. The right to have each lawful vote and ballot for presidential electors, United States Senator, and Representative in Congress at said election, counted to its full strength, unaffected and unimpaired by the casting of votes in the said precincts by men who have been bribed and accepted money therefor and by the
13 counting of said votes or any thereof.

Fourth. The right to have the election boards in said election precincts accept and receive only lawful votes cast thereat and to make a true, correct, and accurate count and return covering only the lawful votes cast by the qualified voters for presidential electors, United States Senators, and Representatives in Congress from said district by then and there bribing a large number of otherwise qualified voters at said election and promising them in advance of their voting sums of money to vote and cast their ballots in said precincts at said election for presidential electors, United States Senator, and Representative in Congress from said congressional district and by causing the election boards in said precincts to accept and receive said illegal votes and make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return, which men so bribed and purchased included Joseph Emery, Edgar E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis, and other persons whose names are, to the grand jurors, unknown.

That in pursuance of said conspiracy and to effect the object thereof the defendants injured each and all of the qualified electors aforesaid and so planned, bribed, and purchased the votes of otherwise qualified voters at said election, to wit, Joseph Emery, Edgar E. Wise, George Brown, Brant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis, and other persons whose names are, to the grand jurors, unknown, and promised and agreed in advance of their voting to pay them money therefor; and caused them to vote and cast their ballots in said precincts for presidential electors, United States Senator, and Representative in Congress from said district, and caused the election boards
14 in said precincts to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

Contrary to the form and statutes of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Second Count—Section 19, Penal Code.—And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that, on the seventh day of November, 1916, a general election was held in the State of Ohio, under the laws thereof and under

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the laws of the United States, for the election, among others, of twenty-four presidential electors and a United States Senator for said State, and of a Representative in the Congress of the United States from the first congressional district of said State, which said congressional district then included a part of Hamilton County in said State.

That at said election James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, among others, were candidates for presidential electors, and Atlee Pomerene, among others, was a candidate for United States Senator, and Edward H. Brink, among others, was a candidate for Representative in the Congress of the United States from said congressional district.

That each and all of said candidates for presidential electors and for the office of United States Senator, and for the office of Representative in the Congress of the United States, had been, theretofore, regularly and lawfully chosen and nominated to be such candidates at a primary election next preceding said general election and held under the laws of the State of Ohio.

That at the time when each and all of said candidates were so chosen and nominated, and continuously thereafter until and including said seventh day of November, 1916, each and every one thereof was duly qualified under the Constitution and laws of the United States and of the State of Ohio to be a candidate, each for the particular office for which he was chosen and nominated, and likewise duly qualified to hold such office.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Oscar Klayer, Charles Hamburger, Joseph Emery, Edgar E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis, each late of said Hamilton County and of said congressional district, and being hereinafter referred to together as defendants, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including said seventh day of November, 1916, at and within said county of Hamilton and at and within said congressional district, and in the Western Division of the Southern District of Ohio, each then and there well knowing all the premises aforesaid, unlawfully and feloniously did conspire, combine, confederate, and agree together, and with other persons to said grand jurors unknown, to injure and oppress certain citizens of said State and of the United States in the free exercise and enjoyment of certain rights and privileges secured to them, respectively, by the Constitution and laws of the

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United States; that is to say, the right and privileges appertaining to said several candidates, and to all the legally qualified voters at said election voting in said congressional district (the latter forming a class of persons not capable of individual designation).

(First), of having none of such legally qualified voters unlawfully or fraudulently prevented from voting in said congressional district at said election for such candidates for presidential electors, Senator, and Representative, as they chose to vote for.

(Second), of having only legal votes cast in said congressional district at said election for any candidate for presidential elector, United States Senator, or Representative in the Congress of the United States, and accepted, received, counted, and returned by the election boards of said county; and

(Third), of having such election determined by votes not influenced by bribery, fraud, or the wrongful use of money;

And that a description of the means and methods whereby said citizens were so to be injured and oppressed in the free exercise and enjoyment of their said rights and privileges by said defendants is as follows, to wit:

Said defendants, in order fraudulently to favor certain other candidates for said offices at said election, to wit, U. G. Denman, Edwin Jones, Max Burgheim, George McG. Morris, Lyburn T. Palmer, David Oldham, Samuel A. Rennolet, Newton P. Foster, John M. Mulford, Jacob W. Byers, Solon O. Richardson, John B. Lindsey, Barton Walters, Albert E. Sartain, Sol. M. Wolf, N. S. Everhard, Charles L. Casey, John A. Fouts, Wilson Bradrick, Avery C. Jones, Edward O. Whitney, Edward W. Horn, Harry L. Vail, and W. W. Hall, as candidates for presidential electors; Myron T. Herrick, as candidate for United States Senator; and Nicholas Longworth, as candidate for Representative in the Congress of the United States, and to secure the election of such other candidates, instead of the election of the candidate hereinbefore first named, without regard to the true preferences and choice of said legally qualified voters of said congressional district, unlawfully were to prevent, by force, intimidation, and fraud, to be used and practiced upon them by said defendants, as many of said legally qualified voters of said congressional district who were desirous of voting for the candidates first above mentioned, from voting at said election for those candidates, as said defendants could prevent by those means; and were to procure, by bribery, payment, and promise in advance of or at said election, of payment of money to them for so doing, others of said legally qualified voters desirous of voting for the candidates first above named, to vote at said election for said other candidates instead of said candidates first above named, and thereby procure the acceptance, receipt, counting, and returning in due course by said election boards of said congressional district of such illegal votes and of such votes so influenced by bribery, fraud, and improper use of money, as aforesaid.

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And so the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do say, that said Oscar Klayer, Charles Hamburger, Joseph Emery, Edgar E. Wise, George Brown, Grant Brown, Joseph Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turner, and William Davis, throughout the period of time, at the place, and in manner and form aforesaid, unlawfully and feloniously did conspire to injure and oppress citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States.

Against the peace and dignity of the United States of America, and contrary to the form of the statutes in such case made and provided.

Third Count—Section 37, Penal Code.—The grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further
18 charge and present that, Oscar Klayer, Charles Hamburger, Joseph Emery, Edgar E. Wise, George Brown, Grant Brown, James Guiten, Lemuel Waters, William Turney, Leroy Turney and William Davis, together with other persons whose names are to the grand jurors unknown, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including the seventh day of November, 1916, in Hamilton County, within the State of Ohio, and within the Western Division of the Southern District of Ohio, and within the jurisdiction of the above-entitled court, did feloniously conspire, combine, confederate and agree together, and with other persons whose names are to the grand jurors unknown, to defraud the United States of America in the manner and for the purpose as follows: By perverting—

First, by perverting and obstructing, and corruptly administering and procuring to be corruptly administered and maladministrating, and causing to be maladministrated, and by committing and causing to be committed, wilful frauds upon each of the following sections of the Constitution of the United States, and upon each of the following laws of the United States, to wit:

(a) Article 2, section 1, of the Constitution of the United States, providing for the election of the President and Vice President of the United States;

(b) Twelfth amendment to said Constitution providing for the election of the President and Vice President of the United States;

(c) The seventeenth amendment to said Constitution providing for the election of Senators by direct vote;

(d) Article 1, section 2 of said Constitution providing for the election of Representatives in the Congress of the United States of America;

(e) Article 1, section 4 of said Constitution providing for
19 the time, place, and manner of holding elections for Senators and Representatives of the United States;

(f) An act of the Congress of the United States, entitled "An act providing a temporary method of conducting the nomination and election of United States Senators," approved June 4th, 1914.

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Second, by denying to and preventing the enjoyment by the United States of America of certain governmental rights and functions to it then and there belonging, namely:

(a) The right and function to have the election of candidates for presidential electors, United States Senators, and Representatives in the Congress of the United States of America determined by the votes of voters who have not been bribed.

(b) The right and function to have the election boards accept, receive, count, and return the legal and only the legal votes cast by qualified voters for presidential electors, United States Senators, and Representatives in the Congress of the United States.

(c) The right and function to have all qualified voters vote for presidential electors, United States Senators without unlawful interference and without intimidation.

Third, by obtaining from the governor of the State of Ohio a certificate of election, sealed with the seal of and attested by the secretary of state of said State, certifying that at the general election held on Tuesday, November 7th, A. D. nineteen hundred and sixteen, at which presidential electors and a United States Senator for the State of Ohio and a Representative in the Congress of the United States for the first congressional district of the State of Ohio, were voted for, chosen and elected, one Nicholas Longworth, whom they intended as a part of said conspiracy to elect by fraud and illegality, and contrary to the laws of said State of Ohio, and the Constitution and laws of the United States, in the manner hereinafter set out, was regularly elected a Representative in the Congress of the United States from the first congressional district in said State at said election and in accordance with the laws of said State and the Constitution and laws of the United States of America; and by causing said Nicholas Longworth to present said certificate of election to the House of Representatives of the United States of America, and to the clerk of the last preceding House of Representatives of the United States of America before the first meeting of the Sixty-fourth Congress of the United States in order that said Nicholas Longworth should have his name placed on the roll of the Representatives-elect in said body.

Fourth, by forcing upon the United States of America and upon the House of Representatives of the Congress thereof, as a duly elected member of said House of Representatives, the said Nicholas Longworth, and thereby securing for him, the said Nicholas Longworth, the privileges, immunities, and emoluments of a Member of said House of Representatives, including the statutory pay of seventy-five hundred dollars per annum, provided by the law as the compensation for the yearly service of any duly elected Member of said House of Representatives.

Fifth, by voting and causing to be voted for candidate for presidential electors, and for candidates for United States Senators, and for a candidate for Representative in Congress at said election, in the various election precincts of the first congressional district of

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Hamilton County, in said State of Ohio, a large number of persons to be thereafter chosen by said defendants, who did not or would not then have or possess the qualifications for electors required by the seventeenth amendment and by article one, section 2 of the Constitution of the United States of America and by the laws of the State of Ohio, governing the qualifications of electors at said election, with full knowledge upon the part of said defendant, and each
21 of them, that persons so to be voted and caused to be voted as aforesaid, did not and would not then have or possess the requisite qualifications for electors at said election.

Sixth, by corruptly purchasing and debauching said election by bribing and buying any men they, the said defendants, could bribe and buy, which said men so to be bought, bribed and purchased were to be chosen and selected by said defendants in the various precincts of the first congressional district of said Hamilton County and by procuring said men to sell their votes therein for presidential electors, United States Senator, and said Representative in Congress, and by causing such men, when so bought, bribed and purchased, to vote in said county for presidential electors, United States Senator, and said Representative in Congress.

Seventh, by causing the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect and inaccurate return of the votes cast therein, by including said illegal votes in said count and return.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterward, to wit, on the seventh day of November, in the year of our Lord, one thousand nine hundred and sixteen, in pursuance of and in furtherance of and execution of and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation and agreement aforesaid, said Oscar Klayer procured the said defendant, Edgar E. Wise, a registered voter in precinct B of the eighteenth ward of the city of Cincinnati and in the first congressional district of Ohio to vote the straight Republican ticket at said election and then and there and at the same time instructed the said Edgar E. Wise, how to mark his ballot to vote said Republican ticket; and that the said defendant, Oscar Klayer, then and
22 there and at the time time instructed and promised the said defendant, Edgar E. Wise, that after he had voted in accordance with said instructions he would be paid money therefore; that pursuant to said instructions and agreement and in furtherance of said conspiracy said defendant, Edgar E. Wise, marked his ballot so as to vote the straight Republican ticket and so cast the same; and after having cast the said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted in accordance with said instructions and agreement the said Edgar E. Wise, met the said defendant, Oscar Klayer, in close proximity to the voting place in said ward and precinct and then and there in accordance with said agreement and

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in furtherance of said conspiracy and to effect the object thereof the said Oscar Klayer paid the said defendant, Edgar E. Wise, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterward, to wit, on the seventh day of November, in the year of our Lord, one thousand nine hundred and sixteen, in pursuance of and in furtherance of and in execution of and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation and agreement aforesaid, said Oscar Klayer procured the said defendant, Lemuel Waters, a registered voter in precinct B of the eighteenth ward of the city of Cincinnati and in the first congressional district of Ohio to vote the straight Republican ticket at said election and then and there and at the same time instructed the said Lemuel Waters how to mark his ballot to vote said Republican ticket; and that the said defendant, Oscar Klayer, then and there and at the same time instructed and provised the said defendant, Lemuel
23 Waters that after he had voted in accordance with said instructions he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of said conspiracy said defendant, Lemuel Waters, marked his ballot so as to vote the straight Republican ticket and so cast the same; and after having cast the said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted in accordance with said instructions and agreement, the said Lemuel Waters, met the said defendant, Charles Hamburger, in close proximity to the voting place in said ward and precinct and then and there in accordance with said agreement and in furtherance said conspiracy and to effect the object thereof the said Charles Hamburger paid the said defendant, Lemuel Waters, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that afterward, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of and in execution of and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid, said Charles Hamburger procured the said defendant, George Brown, a registered voter in precinct B of the eighteenth ward of the city of Cincinnati and in the first congressional district of Ohio to vote the straight Republican ticket at said election, and then and there and at the same time instructed the said George Brown how to mark his ballot to vote said Republican ticket; and that the said defendant, Charles Hamburger, then and there and at the same time instructed and promised the said defendant, George Brown, that after he had voted in accordance with said instructions he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance

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24 of said conspiracy said defendant, George Brown marked his ballot so as to vote the straight Republican ticket and so cast the same; and after having cast the said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted in accordance with said instructions and agreement, the said Oscar Klayer met the said George Brown, defendant, in close proximity to the voting place in said ward and precinct and then and there in accordance with said agreement and in furtherance of said conspiracy and to effect the object thereof the said Oscar Klayer paid the said defendant, George Brown, the sum of one dollar.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

STUART R. BOLIN,
United States Attorney.

(Endorsement:) Indictment. Violations of secs. 19 and 37, Penal Code. A true bill, J. L. Clark, foreman.

25 And afterwards, to wit, on the 22nd day of May, A. D. 1917, came the defendants, Oscar Klayer and Chas. Hamburger, by their attorneys, and filed in the clerk's office of the court aforesaid a certain demurrer in this cause, which said demurrer is clothed in the words and figures following, to wit:

Demurrer.

In the District Court of the United States of America for the Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
OSCAR KLAYER AND CHAS. HAMBURGER, DEFENDANTS. } No. 1140.

Demurrer of Oscar Klayer and Chas. Hamburger to the indictment.

Now come the defendants, Oscar Klayer and Chas. Hamburger, and demur to the indictment herein and to each and every count thereof, for the reason that the said indictment and the several counts thereof do not state facts sufficient to charge offenses against the laws of the United States of America.

Defendants further demur to each of the several counts hereof by reason of defects apparent therein, the particulars of said defects in said counts being as follows, to wit:

First and second counts.

Defendants demur to the first and second counts of said indictment for the reason that the same do not state facts sufficient to charge an

offense against the laws of the United States of America in the following particulars, to wit:

First. Because it appears from the allegations of said counts
26 that the various rights and privileges therein set forth alleged to be the rights and privileges of James E. Campbell and other alleged candidates for presidential electors, Atlee Pomerene, alleged candidate for the Senate of the United States from the State of Ohio, Edward Brink, alleged candidate for Member of the House of Representatives of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the State of Ohio and each and all of the qualified electors in each of the voting precincts of the State of Ohio, are not secured to them or either of them by the Constitution or laws of the United States.

Second. Because it does not appear from the allegations of said counts that James E. Campbell and other alleged candidates for presidential electors, Atlee Pomerene, alleged candidate for Senator of the United States from the State of Ohio, Edward Brink, alleged candidate for Member of the House of Representatives of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the State of Ohio, and each and all of the qualified electors in each of the voting precincts of the State of Ohio could have been injured, oppressed, threatened or intimidated in the free exercise and enjoyment of any right or privilege secured to them or either of them by the Constitution or laws of the United States by reason of said alleged conspiracy.

Third. Because said counts fail to set forth any offense committed against the laws of the United States, but the offense sought to be alleged therein, if any is so described, was an offense against the laws of the State of Ohio.

Fourth. Because the said counts and each of them show that this court has no jurisdiction to try and punish the alleged offenses therein described.

27 Fifth. Because, in other particulars, said counts and each of them, fail to describe any offense against the laws of the United States.

Third count.

Defendants demur to the third count of said indictment for the reason that the same does not state facts sufficient to charge an offense against the laws of the United States of America in the following particulars, to wit:

First. Because the allegations of said count do not describe a conspiracy either to commit an offense punishable by the laws of the United States or to defraud the United States in any manner or for any purpose.

Second. Because the offense therein set forth, if the same be an offense, is not an offense against the United States, but against the State of Ohio.

Third. Because the United States can not be defrauded in any manner or for any purpose by the alleged conspiracy of the defendants as set forth in said count.

Fourth. Because the United States can not be defrauded in any manner or for any purpose by any of the alleged purposes of the defendants alleged to have been the results sought to be attained by said alleged conspiracy.

Fifth. Because the alleged overt acts described in said counts could not in any manner or for any purpose defraud or tend to defraud the United States.

Sixth. Because in other particulars said count fails to describe any offense against the laws of the United States.

SHERMAN T. MCPHERSON,
JOHN R. HOLMES,
FROOME MORRIS,
M. MULLER,
Attorneys for Defendants.

28 And afterwards, to wit, on the 22nd day of May, A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to wit:

Entry—12–333.

District Court of the United States of America, Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
OSCAR KLAYER AND CHAS. HAMBURGER, DEFENDANTS. } Entry.

This day this cause came on to be heard on the indictment and the demurrer thereto, and being argued by counsel, and the court being fully advised in the premises, finds it has no jurisdiction of the matters and things charged in said indictment, and it is therefore ordered, adjudged, and decreed that said demurrer be and it is hereby sustained, and the defendants, and each of them, be and they are hereby discharged from further attendance upon this court, to all of which the United States by its counsel excepts.

HOLLISTER, *Judge.*

And afterwards, to wit, on the 19th day of June, A. D. 1917, the following petition for writ of error was filed in the clerk's office of said court:

Petition for writ of error.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, plaintiff, *v.* OSCAR KLAYER, CHARLES HAMBURGER, Joseph Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Watters, William Turney, Leroy Turner, and William Davis, defendants.	Petition for writ of error.

29 Now comes the United States of America, plaintiff herein, and says that on or about the twenty-second day of May, 1917, this court entered a judgment herein against the plaintiff and in favor of the defendants, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignments of error which is filed with this petition.

Wherefore the United States of America, plaintiff herein, prays that a writ of error may issue in its behalf to the Supreme Court of the United States for the correction of the errors so complained of and that a transcript of the record of the proceedings and papers in this cause duly authenticated may be sent to the said Supreme Court of the United States.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

And afterwards, to wit, on the 19th day of June, A. D. 1917, the following assignment of errors was filed in the clerk's office of said court:

Assignment of errors.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *v.* OSCAR KLAYER, CHARLES HAMBURGER, Joseph Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Watters, William Turney, Leroy Turner, and William Davis, defendants.	No. 1140. Assignment of errors.

The plaintiff in this action, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers were committed upon the trial of this cause, to wit:

30 I. The court erred in its decision and judgment sustaining the demurrer to the indictment and each count thereof.

II. (a) The court erred in its decision and judgment sustaining the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment sustaining the demurrer to the second count of said indictment.

III. (a) The court erred in its construction of the statute upon which the first count of said indictment was based; and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said first count of said indictment.

(b) The court erred in its construction of the statute upon which the second count of said indictment was based; and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said second count of said indictment.

IV. (a) The court erred in its decision and judgment in not overruling the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment in not overruling the demurrer to the second count of said indictment.

V. The court erred in its decision and judgment in not overruling the demurrer to said indictment and to each count thereof.

For these reasons the plaintiff, the United States of America, asks that this case be reviewed, and that such judgment be rendered in the Supreme Court of the United States as should have been rendered in the court below, and that such action be taken as will pro-

31 tect the rights of the plaintiff in the premises.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

And afterwards, to-wit, on the 19th day of June, A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to-wit:

Entry—12–355.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
v.
OSCAR KLAYER, CHARLES HAMBURGER, JOSEPH Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Watters, William Turney, Leroy Turner, and William Davis, defendants. } Entry. No. 1140.

Now comes the United States attorney on behalf of the plaintiff and presents for allowance a petition for a writ of error and assign-

ments or error accompanying same, upon consideration of which the court hereby allows said petition and orders a writ of error to the Supreme Court of the United States.

HOLLISTER,
United States District Judge, S. D. O.

32 And afterwards, to-wit, on the 27th day of June, A. D. 1917, the following stipulation was filed in the clerk's office of said court:

Stipulation.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
OSCAR KLAYER, CHARLES HAMBURGER, JOSEPH Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Watters, William Turney, Leroy Turner, and William Davis, defendants. } No. 1140. Stipulation.

It is hereby agreed and stipulated that the record in this cause, so far as the undersigned are concerned, shall consist of the following: Indictment, demurrer to indictment, opinion of court on demurrer, order sustaining demurrer, petition for writ of error, assignments of error and order allowing writ.

The clerk is therefore requested to prepare a transcript of the foregoing pleadings and papers to be filed in the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
By STUART R. BOLIN,
United States Attorney.
Per JAMES R. CLARK,
Assistant U. S. Attorney.
OSCAR KLAYER and CHARLES HAMBURGER,
By JOHN R. HOLMES,
SHERMAN T. MCPHERSON,
FROOME MORRIS,
M. MULLER,
Their Attorneys.
LEMUEL WATERS & LEROY TURNER,
By A. LEE BEATY,
Their Atty.

* * * * * * *

52 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the District Court of the United States for the Southern District of Ohio, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, or some of you, between the United States of America, plaintiff, and Oscar Klayer, Charles Hamburger, Joseph Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Watters, William Turney, Leroy Turner, and William Davis, defendants, a manifest error hath happened, to the great damage of the said the United States of America as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Edward D. White, Chief Justice of the United States, the 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.] B. E. DILLEY,
Clerk of the District Court of the United States for the Southern District of Ohio.
By HARRY F. RABE, *Deputy.*

Allowed by—
H. C. HOLLISTER,
Judge of the District Court of the United States for the Southern District of Ohio.

(Indorsed:) Filed Jun. 19, 1917. B. E. Dilley, clerk.

53 UNITED STATES OF AMERICA, *ss:*

To Oscar Klayer, Charles Hamburger, Joseph Emery, Edgar Wise, George Brown, Grant Brown, James Guiten, Lemuel Watters, William Turney, Leroy Turner, and William Davis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the Southern District of Ohio, Western Division, wherein the United States of America is plaintiff in error and you are defendants in error, to

show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

H. C. HOLLISTER,
District Judge of the United States
for the Southern District of Ohio.

54 On this 11th day of July, in the year of our Lord one thousand nine hundred and seventeen, personally appeared John F. Burns, deputy U. S. marshal, before me, the subscriber, Stephen H. Waters, notary public, Hamilton County, Ohio, and makes oath that he delivered a true copy of the within citation to Edgar Wise, Grant Brown, George Brown.

M. DEVANNEY,
U. S. Marshal, S. D. O.,
By JOHN F. BURNS, *Deputy.*

Sworn to and subscribed the 11th day of July, A. D. 1917.

[SEAL.] STEPHEN H. WATERS,
Notary Public, Hamilton County, Ohio.

CIN'TI., O., *June 23, 1917.*

We acknowledge service on the within citation as to Oscar Klayer, Charles Hamberger.

JOHN R. HOLMES,
SHERMAN F. MCPHERSON,
FROOME MORRIS,
M. MULLER,
Attys. for defendants above named.

(Indorsed:) Marshal's criminal docket No. 554. Rec'd July 7-17.

I acknowledge service on the within citation as to Lemuel Watters and Leroy Turner.

A. LEE BEATY,
Att'y for Defendants Above Named.

Marshal's fees: 3 services, $6.00.

55 (Indorsed:) No. ——, United States District Court, Southern District of Ohio, Western Division.

(Indorsement on cover:) File No. 26046, S. Ohio D. C. U. S. Term No. 579. The United States of America, plaintiff in error, vs. Oscar Klayer, Charles Hamburger, Joseph Emery et al. Filed July 19th, 1917. File No. 26046.

○

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 580.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

ROBERT URICHO, JOHN RYAN, FRANK REESE, ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1 Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
ROBERT URICHO, JOHN RYAN, FRANK REESE, EMMETT Tiemeyer, Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, William Miller, Luke Hill, Sam Sallee, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, William Brown, George Orth, and John Goldenstedte, defendants in error. } No. ——.

Transcript.

Error to the District Court of the United States for the Western Division of the Southern District of Ohio.

STUART R. BOLIN, Columbus, O.,
U. S. Attorney, S. D. O.
JAMES R. CLARK, Cincinnati, O.,
Asst. U. S. Attorney, S. D. O.
Attorneys for Plaintiff in Error.
JOHN R. HOLMES, Cincinnati, O.,
SHERMAN T. MCPHERSON, Cincinnati, O.,
FROOME MORRIS, Cincinnati, O.,
M. MULLER, Cincinnati, O.,
A. LEE BEATY, Cincinnati, O.,
Attorneys for certain Defendants in Error.

(Indorsed:) Office of the Clerk, Supreme Court U. S. Received July 19, 1917.

2 No. 1141.

UNITED STATES DISTRICT COURT,
Southern District of Ohio,
Western Division. } *ss.*

In the District Court of the United States within and for the district and division aforesaid. Present: The Honorable Howard C.

Hollister, Judge. Among the proceedings had were the following, to wit:

THE UNITED STATES OF AMERICA, *vs.* ROBERT URICHO, JOHN RYAN, FRANK REESE, Emmett Tiemeyer, Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, William Miller, Luke Hill, Sam Sallee, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, William Brown, George Orth, and John Goldenstedte.	Indictment. No. 1141.

Be it remembered that, to wit, on the twenty-fifth day of January, in the year of our Lord one thousand nine hundred and seventeen, came to the grand jurors of the United States of America, within and for the Western Division of the Southern District of Ohio, and presented to the court their certain bill of indictment herein, which said bill of indictment is clothed in the words and figures following, to wit:

3 In the District Court of the United States of America for the Southern District of Ohio, Western Division. No. 1141, of the October term in the year nineteen hundred and sixteen.

SOUTHERN DISTRICT OF OHIO,
Western Division, ss:

Count one—section 19, Penal Code.

The grand jurors for the United States of America, empaneled and sworn in the District Court of the United States for the Western Division of the Southern District of Ohio, at the October term thereof, in the year nineteen hundred and sixteen and inquiring for that division and district, upon their oaths and affirmations, charge and present, that:

Robert Uricho, John Ryan, Frank Reese, Emmett Tiemeyer, Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, William Miller, Luke Hill, Sam Sallee, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, William Brown, George Orth, and John Goldenstedte, together with other persons whose names are to the grand jurors unknown, throughout the period of time from October first, nineteen hundred and sixteen, to and including November seventh, nineteen hundred and sixteen, in Hamilton County, within the State of Ohio, and within the

western division of the southern district of said State of Ohio, and within the jurisdiction of the above-entitled court, did feloniously conspire, combine, confederate, and agree together, and with other persons whose names are to the grand jurors unknown, to in-
4 jure, oppress, threaten and intimidate certain citizens of the United States, to wit:

James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, and each of them, in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States, to wit:

First, of being candidates for presidential electors from the State of Ohio, at a general election which was to be, and in fact was, held in the State of Ohio, and in the first congressional district thereof, on said seventh day of November, at which time presidential electors for the State of Ohio were to be, and in fact were, voted for, chosen, and elected, and at which time a United States Senator for the State of Ohio was to be, and in fact was, voted for, chosen, and elected, and at which time a Representative in the Congress of the United States of America, in said first congressional district of Ohio, was to be, and in fact was, voted for, chosen, and elected.

Second, of having qualified voters appear at the polls and vote at said election for presidential electors.

Third, of having only qualified voters vote at said election for presidential electors.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for presidential electors.

Fifth, of having their election or rejection decided and determined by voters who had not been bribed, and by votes which had not been purchased.

5 Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal and only the legal votes cast by qualified voters for presidential electors:

First, by then and there bribing a large number of otherwise qualified voters at said election and promising them in advance of their voting, sums of money to vote against said presidential electors, and each of them, and to vote in favor of opponents of said presidential electors and by causing the said voters so bribed and promised, as aforesaid, to purposely and intentionally place and caused to be placed, each, respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Lewis

W. Hambo, William Miller, Luke Hill, Sam Sallee, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, William Brown, George Orth, and John Goldenstedte, and other persons whose names are, as aforesaid, to the grand jurors unknown.

Second, and also by causing each of said precinct election boards to accept and receive said illegal votes, and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy, and to effect the object thereof, the defendants injured the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace,
D. F. Dunlavy, John Krause, William F. Thompson and
6 George Hodges and bribed a large number of otherwise qualified voters, and caused the said illegal and wrongful votes of William Brown, George Orth, John Goldenstedte, Charles Teague, Roy R. Yakey, Luke Hill, Sam Sallee, Joseph C. Patschell, Charles W. Hayden, William Troy, Joseph Rinck, Lewis W. Hambo, William Miller, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in said count and return.

That the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges were candidates for presidential electors at said election, and their names appeared upon the ballots to be voted thereat; that neither was a Senator or Representative, or person holding office of trust or profit under the United States on said day or at any time within two years immediately prior thereto; that neither had ever engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that each was at said time, and had been for more than five years immediately prior thereto, a bona fide resident of the State of Ohio; that each on said day was twenty-five years old or upwards, and was at said time a male citizen of the United States,
and each was a resident voter of a ward and precinct within
7 the State of Ohio, in which wards and precincts they had re-

spectively resided for more than thirty days immediately prior to said election; that each was a qualified voter and entitled to vote at said election; that each possessed all the qualifications required by law for presidential electors, including the qualifications above set out; that the name of each appeared upon the ballot to be voted for at said election;

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement, the said Robert Uricho, William Brown, George Orth, John Goldenstedte, Luke Hill, Sam Sallee, Joseph C. Patschell, John Ryan, Frank Reese, Emmett Tiemeyer, Charles Teague, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, Henry McManus, George E. Webb, James Kerr, and William Miller, and other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate a certain citizen of the United States, to wit: Atlee Pomerene, in the free exercise and enjoyment of certain rights and privileges secured to him by the Constitution and laws of the United States, to wit:

First, of being a candidate for United States Senator from the State of Ohio at said election.

Second, of having qualified electors appear at the polls and vote at said election for United States Senator.

Third, of having only qualified voters vote at said election for United States Senator.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for United States Senator.

8 Fifth, of having his election or rejection decided and determined by voters who had not been bribed, and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal, and only the legal, votes cast by qualified voters for United States Senator.

First, by then and there bribing a large number of otherwise qualified voters at said election and promising in advance of their voting sums of money to vote against the said Atlee Pomerene and to vote for an opponent of said Atlee Pomerene, and by causing the said voters so bribed and promised as aforesaid to purposely and intentionally place and caused to be placed, each respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were William Brown, George Orth, John Goldenstedte, Charles Teague, Luke Hill, Sam Sallee, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, Rufus Southers, John Weber, Henry McManus, George E. Webb, William

Miller, and other persons whose names are to the grand jurors unknown; and also

Second, by causing each of said precinct election boards to accept and receive said illegal votes, and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy, and to effect the object thereof, the defendants feloniously injured the said Atlee Pomerene, and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of Henry McManus, William Brown, George Orth, John Goldenstedte, Luke Hill, Sam Sallee,
9 Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, John Weber, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, George E. Webb, Lewis W. Hambo, and William Miller, and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election, by including said illegal votes in said count and return.

That the said Atlee Pomerene was a candidate for United States Senator from the State of Ohio at said election; that his name appeared upon the ballots to be voted for at said election for said office.

That on said day the said Atlee Pomerene was more than thirty years of age, and was, and for more than nine years last past had been, a citizen of the United States and a resident and inhabitant of the State of Ohio and of the city of Canton, in the county of Stark, and of the second ward of said city, and that he was then and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; and that he possessed all the qualifications required by law for United States Senator, including the qualifications above set forth.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement the said Henry McManus, William Brown, Robert Uricho, George Orth, John Goldenstedte, Luke Hill, Sam Sallee, John Weber, Joseph C. Patschell, John Ryan, Frank Reese, Emmett Tiemeyer, Charles Teague, Charles W. Hayden,
10 Joseph Miller, Joseph Austin, Rufus Southers, George E. Webb, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, and William Miller, and said other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate a certain citizen of the United States, to

wit, Edward H. Brink, in the free exercise and enjoyment of rights and privileges secured to him by the Constitution and laws of the United States, to wit:

First, of being a candidate for Representative in Congress for the first congressional district of the State of Ohio at said election.

Second, of having qualified voters appear at the polls and vote at said election for Representative in Congress from said district.

Third, of having only qualified voters vote at said election for Representative in Congress from said district.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for Representative in Congress from said district.

Fifth, of having his election or rejection decided and determined by voters who had not been bribed and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal, and only the legal, votes cast by qualified voters for Representative in Congress in said congressional district.

(First), by then and there bribing a large number of otherwise qualified voters at said election, and promising them in advance of their voting sums of money to vote against the said Edward H. Brink and in favor of an opponent, and by causing the said voters so bribed and promised, as aforesaid, to purposely and intentionally place and cause to be placed, each respectively, his own vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Rufus Southers, Henry McManus, William Brown, George Orth, John Goldenstedte, Luke Hill, Charles Teague, Roy R. Yakey, William Troy, George E. Webb, Sam Sallee, John Weber, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, Joseph Rinck, Lewis W. Hambo, and William Miller, and other persons whose names are to the grand jurors unknown; and also,

Second, by causing each of said precinct election boards to accept and receive illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy and to effect the object thereof the defendants feloniously injured the said Edward H. Brink, in the manner so planned as aforesaid, and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of Charles Teague, Joseph C. Patschell, Joseph Austin, Rufus Southers, Henry McManus, George Orth, John Goldenstedte, William Brown, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, Luke Hill, Sam Sallee, John Weber, George E. Webb, Charles W. Hayden, Joseph Miller, and William Miller to be cast and counted at said election, and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate

count and return of the votes cast at said election by including said illegal votes in said count and return.

That the said Edward H. Brink was a candidate for a Member of the House of Representatives in the Congress of the United States of America in the first congressional district of the State of Ohio
12 at said election; that his name appeared upon the ballots to be voted for at said election for said office; that on said election day the said Edward H. Brink was more than twenty-five years of age and was, and for more than seven years immediately prior thereto had been, a citizen of the United States and a resident and inhabitant of the State of Ohio and of the city of Norwood, in the county of Hamilton, and of the second ward of said city, and that he was then and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never been engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof, and he possessed all the other qualifications required by law for a Member of the House of Representatives of the United States of America, including the qualifications above set forth.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement the said Robert Uricho, Rufus Southers, Henry McManus, William Brown, George Orth, John Goldenstedte, John Ryan, Frank Reese, Emmett Tiemeyer, Luke Hill, George E. Webb, Sam Sallee, John Weber, Joseph C. Patschell, Charles W. Hayden, Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Joseph Miller, Joseph Austin, Lewis W. Hambo, James Kerr, and William Miller, and said other persons whose names are to the grand jurors unknown did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate certain citizens of the United States, to wit, each and all of the qualified electors who might actually vote at said election in each of the voting precincts of the said first congressional district and each and all of the qualified electors at said election in each of the voting precincts of the
13 State of Ohio, and that said qualified electors can not now, and could not ever, all be to the grand jurors identified each by his individual name, and such of said electors as can or could be so identified, are too numerous to list by name in this indictment without unreasonably lengthening the same and are so numerous as that it would require an unreasonable prolongation of the investigations by this grand jury to so identify them in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States, to wit:

First. The right to have the votes and ballots for presidential electors, United States Senators, and Representatives in Congress in said congressional district cast in their respective precincts at said election, confined to the votes and ballots of legal and qualified voters of said precincts.

Second. The right to have the votes and ballots cast and counted at said election in said precincts for presidential electors, United States Senators, and Representatives in Congress from said congressional district, confined to those cast by electors who had not been bribed and who had not sold their votes.

Third. The right to have each lawful vote and ballot for presidential electors, United States Senators, and Representative in Congress at said election counted to its full strength unaffected and unimpaired by the casting of votes in said precincts by men who had been bribed and accepted money therefor, and by the counting of said votes or any thereof.

Fourth. The right to have the election boards in said election precincts accept and receive only lawful votes cast thereat, and to make a true, correct, and accurate count and return covering only the lawful votes cast by qualified voters for presidential electors, United States Senators, and Representatives in Congress from said
14 district, by then and there bribing a large number of otherwise qualified voters at said election and promising them in advance of their voting sums of money to vote and cast their ballots in said precincts at said election for presidential electors, United States Senator, and Representative in Congress from said congressional district, and by causing the election boards in said precincts to accept and receive said illegal votes and make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return, which men so bribed and purchased included Rufus Southers, Henry McManus, Charles Teague, William Brown, George Orth, John Goldenstedte, Luke Hill, George E. Webb, Sam Sallee, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, John Weber, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, and William Miller, and other persons whose names are to the grand jurors unknown.

That in pursuance to said conspiracy, and to effect the object thereof, the defendants injured each and all of the qualified electors aforesaid; and as so planned, bribed and purchased the votes of otherwise qualified voters at said election, to wit, Charles W. Hayden, Joseph Miller, Rufus Southers, Henry McManus, William Brown, George Orth, Charles Teague, Roy R. Yakey, William Troy, Joseph Austin, John Goldenstedte, Luke Hill, George E. Webb, Sam Sallee, John Weber, Joseph C. Patschell, Joseph Rinck, Lewis W. Hambo, William Miller, and other persons whose names are to the grand jurors unknown, and promised and agreed in advance of their voting to pay them money therefor; and caused them to vote and cast their ballots in said precincts for presidential electors, United States Senator, and Representative in Congress from said district, and caused the election boards in said precincts to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

15 Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Second count—Section 19, penal code. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that, on the seventh day of November, 1916, a general election was held in the State of Ohio, under the laws thereof and under the laws of the United States, for the election, among others, of twenty-four presidential electors and a United States Senator, for said State, and of a Representative in the Congress of the United States from the first congressional district of said State, which said congressional district then included a part of Hamilton County in said State.

That at said election James E. Campbell, Judson Harmon Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, among others, were candidates for presidential electors, and Atlee Pomerene, among others, was a candidate for United States Senator, and Edward H. Brink, among others, was a candidate for Representative in the Congress of the United States from the said congressional district.

That each and all of the said candidates for presidential electors, and for the office of United States Senator, and for the office for Representative in the Congress of the United States, had been theretofore regularly and lawfully chosen and nominated to be such candidates at a primary election next preceding the said general election, and held under the laws of the State of Ohio.

That at the time when each and all of said candidates
16 were so chosen and nominated, and continuously thereafter until and including the said seventh day of November, 1916, each and every one thereof was duly qualified under the Constitution and laws of the United States and of the State of Ohio, to be a candidate, each for the particular office for which he was chosen and nominated, and, likewise, duly qualified to hold such office.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that Robert Uricho, Charles W. Hayden, Joseph Miller, Rufus Southers, Henry McManus, William Brown, John Ryan, Frank Reese, Charles Teague, Roy R. Yakey, George Orth, Joseph Austin, John Goldenstedte, Luke Hill, George E. Webb, Sam Sallee, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, Emmett Tiemeyer, John Weber, Joseph C. Patschell, and William Miller, each late of the said Hamilton County and of the said congressional district, and being hereinafter referred to together as defendants, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including the said seventh day of November, 1916, at and within

the said county of Hamilton, and at and within the said congressional district, in the Western Division of the Southern District of Ohio, each then and there well knowing all the premises aforesaid, unlawfully and feloniously did conspire, combine, confederate, and agree together, and with other persons to the said grand jurors unknown, to injure and oppress certain citizens of the said State and of the United States in the free exercise and enjoyment of certain rights and privileges secured to them, respectively, by the Constitution and laws of the United States; that is to say, the right and privilege appertaining to said several candidates, and to all the legally qualified voters at said election voting in said congressional district (the latter forming a class of persons not capable of individual designation).

17 First, of having none of such legally qualified voters unlawfully or fraudulently prevented from voting in said congressional district at said election for such candidates for presidential electors, United States Senator, and Representative as they chose to vote for.

Second, of having only legal votes cast in said congressional district at said election for any candidate for presidential elector, United States Senator, or Representative in the Congress of the United States, and accepted, received, counted, and returned by the election boards of said county; and

Third, of having such election determined by votes not influenced by bribery, fraud, or the wrongful use of money.

And that a description of the means and methods whereby said citizens were so to be injured and oppressed in the free exercise and enjoyment of their said rights and privileges by the said defendants is as follows, to wit:

Said defendants in order fraudulently to favor certain other candidates for the said offices at said election, to wit, U. G. Danman, Edwin Jones, Max Burgheim, George McG. Morris, Lyburn T. Palmer, David Oldham, Samuel A. Rennolet, Newton P. Foster, John M. Mulford, Jacob W. Byers, Solon O. Richardson, John B. Lindsey, Barton Walters, Albert E. Sartain, Sol. M. Wolf, N. S. Everhard, Charles L. Casey, John A. Fouts, Wilson Bradrick, Avery C. Jones, Edward O. Whitney, Edward W. Horn, Harry L. Vail, and W. W. Hall, as candidates for presidential electors; Myron T. Herrick, as candidate for United States Senator; and Nicholas Longworth, as candidate for Representative in the Congress of the United States, and to secure the election of such other candidates, instead of the election of the candidates hereinbefore first named, without regard to the two preferences and choice of said legally qualified

18 voters of said congressional district, unlawfully were to prevent, by force, intimidation, and fraud, to be used and practiced upon them by said defendants, as many of said legally qualified voters of said congressional district who were desirous of voting for the candidates first above mentioned, from voting at the said election for those candidates, as said defendants could prevent by those

means; and were to procure, by bribery, payment, and promise in advance of or at said election of payment of money to them for so doing, others of said legally qualified voters desirous of voting for the candidates first above mentioned, to vote at said election for said other candidates instead of said candidates first above named, and thereby procure the acceptance, receipt, counting, and returning in due course by said election boards of said congressional district, of such illegal votes and of such votes so influenced by bribery, fraud, and improper use of money, as aforesaid.

And so the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do say, that said Robert Uricho, Charles W. Hayden, Joseph Miller, Rufus Southers, Henry McManus, William Brown, George Orth, Joseph Austin, John Goldenstedte, Luke Hill, John Ryan, Frank Reese, Charles Teague, Roy R. Yakey, William Troy, George E. Webb, Sam Sallee, John Weber, Joseph C. Patschell, Joseph Rinck, Lewis W. Hambo, James Kerr, Emmett Tiemeyer, and William Miller, throughout the period of time, at the place, and in manner and form aforesaid, unlawfully and feloniously did conspire, to injure and oppress citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States;

Against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

19 Third count—Section 37, Penal Code. The grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that Charles W. Hayden, Joseph Miller, Rufus Southers, Robert Uricho, John Ryan, Frank Reese, Henry McManus, William Brown, George Orth, Joseph Austin, Emmett Tiemeyer, Charles Teague, Roy R. Yakey, John Goldenstedte, Luke Hill, George E. Webb, Sam Sallee, John Weber, Joseph C. Patschell, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, and William Miller, together with other persons whose names are to the grand jurors unknown, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including the seventh day of November, 1916, in Hamilton County, within the State of Ohio, and within the western division of the southern district of Ohio, and within the jurisdiction of the above entitled court, did feloniously conspire, combine, confederate, and agree together, and with other persons whose names are to the grand jurors unknown, to defraud the United States of America, in the manner and for the purposes, as follows:

First, by perverting and obstructing, and corruptly administering and procuring to be corruptly administered, and maladministering and causing to be maladministered, and by committing and causing to be committed, wilful frauds upon each of the following sections of the Constitution of the United States, and upon each of the following laws of the United States, to wit:

(a) Article 2, section 1, of the Constitution of the United States, providing for the election of the President and Vice President of the United States.

(b) The twelfth amendment to said Constitution, providing for the election of President and Vice President of the United States.

(c) The seventeenth amendment to said Constitution providing for the election of Senators by direct vote.

(d) Article 1, section 2, of said Constitution, providing for the election of Representatives in the Congress of the United States of America.

(e) Article 1, section 4, of said Constitution, providing for the time, place, and manner of holding elections for Senators and Representatives of the United States.

(f) An act of the Congress of the United States, entitled, "An act providing a temporary method of conducting the nomination and election of United States Senators," approved June 4th, 1914.

Second, by denying to and preventing the enjoyment by the United States of America of certain governmental rights and functions to it then and there belonging, namely:

(a) The right and function to have the election of candidates for presidential electors, United States Senators and Representatives in the Congress of the United States of America, determined by the votes of voters who have not been bribed.

(b) The right and function to have the election boards accept, receive, count, and return the legal, and only the legal, votes cast by qualified voters for presidential electors, United States Senators, and Representatives in the Congress of the United States.

(c) The right and function to have all qualified voters vote for presidential electors, United States Senators and Representatives in the Congress of the United States, without unlawful interference and without intimidation.

Third, by obtaining from the governor of the State of Ohio a certificate of election, sealed with the seal of, and attested by the secretary of State, of said State, certifying that at the general election held on Tuesday, November seventh, A. D. nineteen hundred and sixteen, at which presidential electors and a United States Senator for the State of Ohio and a Representative in the Congress of the United States for the first congressional district of the State of Ohio, were voted for, chosen, and elected, one Nicholas Longworth, whom they intended as a part of said conspiracy to elect by fraud and illegality and contrary to the laws of said State of Ohio, and the Constitution and laws of the United States, in the manner hereinafter set out, was regularly elected a Representative in the Congress of the United States from the first congressional district in said State at said election and in accordance with the laws of said State and the Constitution and laws of the United States of America; and by causing said Nicholas Longworth to present said certificate of election to the House of Repre-

sentatives of the United States of America, and to the clerk of the last preceding House of Representatives of the United States of America, before the first meeting of the Sixty-fourth Congress of the United States, in order that the said Nicholas Longworth should have his name placed on the roll of the Representatives elected in said body.

Fourth, by forcing upon the United States of America and upon the House of Representatives of the Congress thereof, as a duly elected Member of said House of Representatives, the said Nicholas Longworth, and thereby securing for him, the said Nicholas Longworth, the privileges, immunities, and emoluments of a Member of the said House of Representatives, including the statutory pay of seventy-five hundred dollars per annum provided by law as the compensation for the yearly service of any duly elected Member of said House of Representatives.

Fifth, by voting and causing to be voted for candidates for presidential electors, and for candidates for United States Senators, and for a candidate for Representative in Congress at said election, in the various precincts of the first congressional district, Hamilton
22 County, in the said State of Ohio, a large number of persons to be thereafter chosen by the said defendants, who did not or would not then have or possess the qualifications for electors required by the seventeenth amendment, and by Article I, section 2, of the Constitution of the United States of America, and by the laws of the State of Ohio governing the qualifications of electors at said election, with full knowledge upon the part of said defendants, and each of them, that the said persons so to be voted and caused to be voted, as aforesaid, did not and would not then have or possess the requisite qualifications for electors at said election.

Sixth, by corruptly purchasing and debauching the said election by bribing and buying any men they, the said defendants, could bribe and buy, which said men so to be bought, bribed, and purchased were to be chosen and selected by said defendants in the various precincts of the first congressional district of said Hamilton County, and by procuring said men to sell their votes therein for presidential electors, United States Senator, and said Representative in Congress, and by causing such men, when so bought, bribed, and purchased, to vote in said county for presidential electors, United States Senator, and said Representative in Congress.

Seventh, by causing the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate return of the votes cast therein, by including said illegal votes in said count and return.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterwards, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of, and in execution of, and for the purpose of carrying out and to
23 effect the object, design, and purpose of said conspiracy, com-

bination, confederation, and agreement aforesaid, said John Ryan procured the said defendant, Roy R. Yakey, a registered voter in precinct G of the sixth ward of the city of Cincinnati, and in the first congressional district of Ohio, to vote the straight Republican ticket at said election, and then and there and at the same time instructed the said Roy R. Yakey how to mark his ballot to vote said straight Republican ticket, and instructed him not to fold the said ballot after marking the same; that pursuant to said instructions and agreement, and in furtherance of said conspiracy, said defendant Roy R. Yakey, marked his said ballot so as to vote a straight Republican ticket, and cast the same without having folded said ballot, as required by law; that in further pursuance of said instructions and agreement, and to effect the object of said conspiracy, and immediately after he had voted in accordance with said instructions and agreement, the said Roy R. Yakey met the said defendants, Robert Uricho, Frank Reese, and John Ryan, in close proximity to the voting place in said ward and precinct in which said defendant, Roy R. Yakey, had cast his said ballot, and that in accordance with said agreement and in further pursuance of said conspiracy and to effect the object thereof, said defendant, John Ryan, then and there paid said defendant, Roy R. Yakey, the sum of one dollar.

And the grand jurors aforesaid, upon their affirmations and oaths aforesaid, do further charge and present that, afterward, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of, and in execution of, and for the purpose of, carrying out and to effect the object, design, and purpose of said conspiracy, combination,
24 confederation, and agreement aforesaid, said defendant, Robert Uricho, procured the said defendant, William Miller, a registered voter in said precinct G of said sixth ward of the city of Cincinnati and in the first congressional district of Ohio, to vote the straight Republican ticket at said election, and then and there and at the same time and by and with the use of a sample ballot to demonstrate the same, instructed and procured the said William Miller to mark his ballot by placing an X in the circle under the design of the eagle on the said ballot and cast the vote of him, the said William Miller, in said ward and precinct in accordance with said procurement and instruction; that the said Robert Uricho then and there and at the same time instructed the said William Miller that after he had voted in accordance with said instructions he would be paid money therefor; that, pursuant to said instructions and agreement and in furtherance of said conspiracy, said defendant, William Miller, marked his ballot by placing an X in the circle under the design of the eagle displayed thereon, and so cast the same; and after having cast his said ballot and in further pursuance of said instructions and agreement and to effect the object of said conspiracy and immediately after he had voted in accordance with said instructions and agreement the said William Miller met the said defendants,

Robert Uricho, Frank Reese, and John Ryan in an alley in close proximity to the voting place in the said ward and precinct and in accordance with said agreement and in furtherance of said conspiracy and to effect the object thereof the said Robert Uricho paid said defendant, William Miller, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterward, to
25 wit, on the seventh day of November, in the year of our Lord nineteen sixteen, in pursuance of and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid, said defendant, John Ryan, procured the said defendant, Joseph Rinck, a registered voter in the said sixth ward, precinct G, of the city of Cincinnati, and in the first congressional district of Ohio, to vote the straight Republican ticket at said election and then and there and at the same time and by and with the use of a sample ballot to demonstrate the same, instructed and procured the said Joseph Rinck to mark his ballot by placing an X in the circle under the design of the eagle on said ballot and cast the vote of him, the said Joseph Rinck, in the said ward and precinct in accordance with said procurement and instruction; that the said John Ryan then and there and at the same time instructed and promised the said Joseph Rinck that after he had voted in accordance with said instructions he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of said conspiracy said defendant, Joseph Rinck, marked his ballot by placing an X in the circle under the design of the eagle displayed thereon, and so cast the same and after having cast his said ballot and in further pursuance of said instructions and agreement and to effect the object of the said conspiracy, and immediately after he had voted in accordance with said instructions and agreement the said Joseph Rinck saw the said defendants, John Ryan, Robert Uricho, and Frank Reese in close proximity to the voting place in said ward and precinct and in accordance with said agreement and in furtherance of said conspiracy and to effect the object thereof said Robert Uricho paid said defendant, Joseph Rinck, the sum of one dollar.

26 And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterward, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid, said defendant, Emmett Tiemeyer, procured said defendant, Charles Teague, a registered voter in said sixth ward and precinct G of the city of Cincinnati, and in the first congressional district of Ohio, to vote the straight Republican ticket at the said election, and then and there and at the same time instructed the said Charles Teague how

to mark his ballot to vote the straight Republican ticket, and instructed him not to fold his said ballot after marking the same; that pursuant to said instructions and agreement, and in furtherance of the said conspiracy, said defendant, Charles Teague, marked his said ballot so as to vote the straight Republican ticket, and cast the same without having folded the said ballot as required by law; that in further pursuance of said instructions and agreement, and to effect the object of the said conspiracy, and immediately after he had voted in accordance with said instructions and agreement, the said Charles Teague saw the said defendants Robert Uricho, Frank Reese, and John Ryan in close proximity to the voting place in the said ward and precinct in which the said defendant, Charles Teague, had cast his said ballot, and that in accordance with said agreement, and in further pursuance of said conspiracy, and to effect the object thereof, the said defendant, John Ryan, then and there paid the said defendant, Charles Teague, the sum of one dollar.

27 Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

STUART R. BOLIN,
United States Attorney.

The following endorsement appears on back of above indictment: Indictment. Violations of secs. 19 and 37, Penal Code. A true bill. J. L. Clark, foreman.

28 And afterwards, to-wit, on the 22nd day of May, A. D. 1917, came the defendants, Robert Uricho, John Ryan, Frank Reese, Emmett Tiemeyer, and James Kerr, by their attorneys, and filed in the clerk's office of the court aforesaid a certain demurrer in this cause, which said demurrer is clothed in the words and figures following, to-wit:

Demurrer.

In the District Court of the United States of America for the Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
ROBERT URICHO, ET AL., DEFENDANTS. } No. 1141.

Demurrer of Robert Uricho et al. to the indictment.

Now come the defendants, Robert Uricho, John Ryan, Frank Reese, Emmett Tiemeyer, and James Kerr, and demur to the indictment herein and to each and every count thereof, for the reason that the said indictment and the several counts thereof do not state facts sufficient to charge offenses against the laws of the United States of America.

Defendants further demur to each of the several counts hereof by reason of defects apparent therein, the particulars of said defects in said counts being as follows, to-wit:

First and second counts.

Defendants demur to the first and second counts of said indictment for the reason that the same do not state facts sufficient to charge an offense against the laws of the United States of America in the following particulars, to-wit:

29 First, because it appears from the allegations of said counts that the various rights and privileges therein set forth alleged to be the rights and privileges of James E. Campbell and other alleged candidates for presidential electors, Atlee Pomerene, alleged candidate for Senator of the United States from the State of Ohio, Edward Brink, alleged candidate for Member of the House of Representatives of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the State of Ohio and each and all of the qualified electors in each of the voting precincts of the State of Ohio, are not secured to them or either of them by the Constitution or laws of the United States.

Second, because it does not appear from the allegations of said counts that James E. Campbell and other alleged candidates for presidential electors, Atlee Pomerene, alleged candidate for Senator of the United States from the State of Ohio, Edward Brink, alleged candidate for Member of the House of Representatives of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the State of Ohio, and each and all of the qualified electors in each of the voting precincts of the State of Ohio could have been injured, oppressed, threatened, or intimidated in the free exercise and enjoyment of any right or privilege secured to them or either of them by the Constitution or laws of the United States by reason of said alleged conspiracy.

Third, because said counts fail to set forth any offense committed against the laws of the United States, but the offense sought to be alleged therein, if any is so described, was an offense against the laws of the State of Ohio.

30 Fourth, because the said counts and each of them show that this court has no jurisdiction to try and punish the alleged offenses therein described.

Fifth, because in other particulars said counts, and each of them, fail to describe any offense against the laws of the United States.

Third count.

Defendants demur to the third count of said indictment for the reason that the same does not state facts sufficient to charge an offense against the laws of the United States of America in the following particulars, to wit:

First, because the allegations of said count do not describe a conspiracy either to commit an offense punishable by the laws of the United States or to defraud the United States in any manner or for any purpose.

Second, because the offense therein set forth, if the same be an offense, is not an offense against the United States, but against the State of Ohio.

Third, because the United States can not be defrauded in any manner or for any purpose by the alleged conspiracy of the defendants as set forth in said count.

Fourth, because the United States can not be defrauded in any manner or for any purpose by any of the alleged purposes of the defendants alleged to have been the results sought to be attained by said alleged conspiracy.

Fifth, because the alleged overt acts described in said counts could not in any manner or for any purpose defraud or tend to defraud the United States.

Sixth, because in other particulars said count fails to describe any offense against the laws of the United States.

SAMUEL T. MCPHERSON,
JOHN R. HOLMES,
FROOME MORRIS,
M. MULLER,
Attorneys for defendants.

31 And afterwards, to-wit, on the 22nd day of May, A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to wit:

Entry—12-333.

In the District Court of the United States of America for the Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
ROBERT URICHO ET AL., DEFENDANTS.
} Entry. No. 1141.

This day this cause came on to be heard on the indictment and the demurrer thereto, and being argued by counsel, and the court being fully advised in the premises finds it has no jurisdiction of the matters and things charged in said indictment, and it is therefore ordered, adjudged, and decreed that said demurrer be, and it is hereby, sustained, and the defendants and each of them be, and they are hereby, discharged from further attendance upon this court, to all of which the United States by its counsel excepts.

HOLLISTER, *Judge.*

And afterwards, to wit, on the 19th day of June, A. D. 1917, the following petition for writ of error was filed in the clerk's office of said court:

32 Petition for writ of error.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
v.
ROBERT URICHO, JOHN RYAN, FRANK REESE, EMMETT TIEMEYER, Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, William Miller, Luke Hill, Sam Sallee, Joseph C. Patschall, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, William Brown, George Orth, and John Goldenstedte, defendants. } No. 1141.

Petition for writ of error.

Now comes the United States of America, plaintiff herein, and says that on or about the twenty-second day of May, 1917, this court entered a judgment herein against the plaintiff and in favor of the defendants, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignments of error which is filed with this petition.

Wherefore, the United States of America, plaintiff herein, prays that a writ of error may issue in its behalf to the Supreme Court of the United States for the correction of the errors so complained of and that a transcript of the record of the proceedings and papers in this cause duly authenticated may be sent to the said Supreme Court of the United States.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

33 And afterwards, to wit, on the 19th day of June, A. D. 1917, the following assignment of errors was filed in the clerk's office of said court:

Assignment of errors.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *v.* ROBERT URICHO, JOHN RYAN, FRANK REESE, EMMETT TIEMEYER, Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, William Miller, Luke Hill, Sam Sallee, Joseph C. Patschell, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, William Brown, George Orth, and John Goldenstedte, defendants.	No. 1141.

Assignment of errors.

The plaintiff in this action, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers were committed upon the trial of this cause, to wit:

I. The court erred in its decision and judgment sustaining the demurrer to the indictment and each count thereof.

II. (a) The court erred in its decision and judgment sustaining the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment sustaining the demurrer to the second count of said indictment.

III. (a) The court erred in its construction of the statute upon which the first count of said indictment was based, and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said first count of said indictment.

(b) The court erred in its construction of the statute upon which the second count of said indictment was based, and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said second count of said indictment.

IV. (a) The court erred in its decision and judgment in not overruling the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment in not overruling the demurrer to the second count of said indictment.

V. The court erred in its decision and judgment in not overruling the demurrer to said indictment and to each count thereof.

For these reasons the plaintiff, the United States of America, asks that this case be reviewed, and that such judgment be rendered in the Supreme Court of the United States as should have been rendered

56 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the District Court of the United States for the Southern District of Ohio, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, or some of you, between the United States of America, plaintiff, and Robert Uricho, John Ryan, Frank Reese, Emmett Tiemeyer, Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, William Miller, Luke Hill, Sam Sallee, Joseph C. Patschall, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, William Brown, George Orth, and John Goldenstedte, defendants, a manifest error hath happened, to the great damage of the said the United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.]

B. E. DILLEY,
Clerk of the District Court of the United States for the Southern District of Ohio.
By HARRY F. RABE, *Deputy.*

Allowed by—
H. C. HOLLISTER,
Judge of the District Court of the United States for the Southern District of Ohio.

57 (Indorsed:) Filed Jun. 19, 1917. B. E. Dilley, Clerk.

58 UNITED STATES OF AMERICA, *ss:*

To Robert Uricho, John Ryan, Frank Reese, Emmett Tiemeyer, Charles Teague, Roy R. Yakey, William Troy, Joseph Rinck, Lewis W. Hambo, James Kerr, William Miller, Luke Hill, Sam Sallee, Joseph C. Patschall, Charles W. Hayden, Joseph Miller, Joseph Austin, Rufus Southers, John Weber, Henry McManus, George E. Webb, William Brown, George Orth, and John Goldenstedte, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the Southern District of Ohio, Western Division, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

H. C. HOLLISTER,
District Judge of the United States
for the Southern District of Ohio.

59 On this 11th day of July, in the year of our Lord one thousand nine hundred and seventeen, personally appeared John F. Burns, deputy U. S. marshal before me, the subscriber, Stephen H. Waters, notary public, Hamilton County, Ohio, and makes oath that he delivered a true copy of the within citation to Roy R. Yakey, Lewis W. Hambo, William Miller, Luke Hill, Joseph C. Patschall, Joseph Austin, John Weber, Henry McManus, George E. Webb, William Brown, Sam Sallee, George Orth, and John Goldstede.

M. DEVANNEY,
U. S. Marshal, S. D. O.
JOHN F. BURNS, *Deputy.*

Sworn to and subscribed the 11th day of July, A. D. 1917.
[SEAL.] STEPHEN H. WATERS,
Notary Public Hamilton County, Ohio.

Cincinnati, Ohio, June 23, 1917.

(Indorsed:) Marshal's criminal docket No. 550. Rec'd July 6, 1917.

We acknowledge service on the within citation as to Robert Uricho, John Ryan, Frank Reese, Emmett Tiemeyer, and James Kerr.

JOHN R. HOLMES,
SHERMAN T. MCPHERSON,
FROOME MORRIS,
M. MULLER,
Attys. for defendants above named.

I acknowledge service on the within citation as to Rufus Southern.

A. LEE BEATY,
Atty. for defendant above named.

Marshal's fees: 18 services, $26.00.

(Indorsement on cover:) File No. 26,047, S. Ohio, D. C. U. S. Term No. 580. The United States of America, plaintiff in error, vs. Robert Uricho, John Ryan, Frank Reese et al. Filed July 19, 1917. File No. 26,047.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

THE UNITED STATES, PLAINTIFF IN ERROR, *v.* EDWARD BATHGATE, MATTHEW PEACOCK, John Toker et al.	No. 575.
THE UNITED STATES, PLAINTIFF IN ERROR, *v.* JOHN J. BURCKHAUSER, PHILIP BOEHLER, Al Broskey et al.	No. 576.
THE UNITED STATES, PLAINTIFF IN ERROR, *v.* HARRY COONS, JOHN OTTO, JOSEPH MILLER et al.	No. 577.
THE UNITED STATES, PLAINTIFF IN ERROR, *v.* WILLIAM FARRELL, PETER M. LONG, JOHN Long et al.	No. 578.
THE UNITED STATES, PLAINTIFF IN ERROR, *v.* OSCAR KLAYER, CHARLES HAMBURGER, Joseph Emery et al.	No. 579.
THE UNITED STATES, PLAINTIFF IN ERROR, *v.* ROBERT URICHO, JOHN RYAN, FRANK Reese et al.	No. 580.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

18166—17

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General and respectfully moves the court to advance the above-entitled cases for joint hearing on a day convenient to the court.

These cases grow out of frauds alleged to have been committed at the general election on the 7th day of November, 1916, in the First Congressional District in the State of Ohio. The indictments were returned against the named defendants on the 25th day of January, 1917, charging them, in the first and second counts thereof, with conspiracy in violation of section 19 of the Penal Code; and the third count of said indictments charge the defendants with conspiracy to defraud the United States in violation of section 37 of the Penal Code.

The district court sustained a demurrer to each of the indictments upon the ground that the Federal courts have no jurisdiction of such cases, relying upon the decision of this court in *United States* v. *Gradwell*, 243 U. S. 476.

The various records in these respective cases contain assignments of error which are identical, the contention of the Government being that the district court erred in its decision sustaining the demurrer, and further, that the court erred in its application and construction of sections 19 and 37 of the Penal Code to the facts alleged in the indictments.

In all, there are about ninety-nine defendants in these cases, as well as many persons charged with selling their votes at said general election who have

pleaded guilty of having been bribed. These persons have been temporarily discharged from custody, pending the determination of the respective cases in this court, and they will be apprehended should the decision of the district court sustaining the demurrer to the indictments be reversed. Moreover, the cases are of very great public importance, involving as they do the rights of citizens under the Constitution in instances of frauds at a general election for Federal officers.

Inasmuch as these cases present identical questions for determination, and come from the same district in the United States, it is submitted, if the court deems it advisable, that they should be advanced for hearing to the earliest date practicable, and so joined that they may be disposed of substantially as one cause.

Notice of this motion has been served on opposing counsel in all cases.

JOHN W. DAVIS,
Solicitor General.

OCTOBER, 1917.

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In the Supreme Court of the United States.

OCTOBER TERM, 1917.

THE UNITED STATES, PLAINTIFF IN ERROR, *v.* EDWARD BATHGATE, MATTHEW PEACOCK, John Toker, et al.	No. 575.
THE UNITED STATES, PLAINTIFF IN ERROR, *v.* JOHN J. BURCKHAUSER, PHILIP BOEHLER, Al Broskey, et al.	No. 576.
THE UNITED STATES, PLAINTIFF IN ERROR, *v.* HARRY COONS, JOHN OTTO, JOSEPH MILLER, et al.	No. 577.
THE UNITED STATES, PLAINTIFF IN ERROR, *v.* WILLIAM FARRELL, PETER M. LONG, JOHN Long, et al.	No. 578.
THE UNITED STATES, PLAINTIFF IN ERROR, *v.* OSCAR KLAYER, CHARLES HAMBURGER, Joseph Emery, et al.	No. 579.
THE UNITED STATES, PLAINTIFF IN ERROR, *v.* ROBERT URICHO, JOHN RYAN, FRANK Reese, et al.	No. 580.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

BRIEF FOR THE UNITED STATES.

STATEMENT.

These cases (six in number) grow out of bribery alleged to have been committed at the Federal election

on the 7th day of November, 1916, in the First Congressional District in the State of Ohio, at which time there were selected and voted for, among others, certain regularly qualified candidates for presidential electors, a United States Senator, and Representative in Congress.

Defendants were indicted on January 25, 1917, in the District Court of the United States for the Southern District of Ohio for violating sections 19 and 37 of the Criminal Code (35 Stat. 1008, 1092, 1096). The indictments are similar and contain three counts, charging the named defendants, in the first and second counts thereof, with conspiring, in violation of section 19 of the Criminal Code, to injure citizens in the enjoyment of constitutional rights; and, in the third count, with a conspiracy to defraud the United States in violation of section 37 of the Criminal Code.

The first count, founded upon section 19, charges in substance: That the defendants did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate certain citizens of the United States, namely, (1) candidates for presidential electors; (2) a candidate for United States Senator from the State of Ohio; (3) a candidate for Representative in Congress for the First Congressional District of the State of Ohio, and (4) "each and all of the qualified electors who might actually vote at said election, in each of the voting precincts of the said First Congressional District, and each and all of the qualified electors at said election in each and all of the voting precincts of the State of

Ohio," in the free exercise and enjoyment of certain rights and privileges secured to them by the Constitution and laws of the United States, to wit (as to the first, second, and third classes of citizens), (*a*) the right of having only qualified voters vote; (*b*) of having only the votes of qualified voters cast, accepted, counted, and returned at said election; (*c*) of having the election determined by voters who had not been bribed and by votes which had not been purchased, and (*d*) of having the election boards make a true, correct, and accurate count of the legal, and only the legal, votes cast by qualified electors. As to the fourth class of citizens the rights claimed to have been violated are alleged as follows: (*a*) the right to have only legal and qualified voters vote for presidential electors, United States Senator, and Representative in said congressional district; (*b*) the right to have the votes cast and counted confined to those cast by electors who had not been bribed and who had not sold their votes; (*c*) the right to have each lawful vote counted to its full strength unaffected and unimpaired by the casting of votes by men who had been bribed and accepted money therefor, and (*d*) the right to have the election boards accept only lawful votes and make a true, correct, and accurate return thereof. It was further alleged that said unlawful conspiracy was to be and was in fact accomplished by purchasing the votes of certain qualified voters and by causing the election boards to accept and receive said illegal votes and to make

an untrue, incorrect, and inaccurate return by including said bribed votes therein.

The second count, also based on section 19, is largely an epitome of the first count, omitting, however, the allegation of an overt act. There was also a third count in each indictment, charging a conspiracy to violate section 37 of the Criminal Code, the ruling on which may be entirely pretermitted, as it is not complained of. Defendants demurred to these counts on the ground, among others, that "said counts fail to set forth any offense against the laws of the United States."

The District Court sustained the demurrers to both the first and second counts of the indictments, holding that a proper construction of section 19, in the light of the history of its enactment and subsequent codification, evinced an intention of Congress not warranting its application to the facts recited in these counts. The court was brought to this conclusion by what it regarded as necessary deductions from the opinion in *United States* v. *Gradwell*, 243 U. S. 476, while the contention of the Government was and now is that that opinion does not in fact extend to the limit so imputed to it. The conclusion of the lower court amounts to a holding that the Federal courts have no connection with or jurisdiction over bribery at general elections for Federal officers. The opinion appears on pages 22–33 of the Record, No. 575.

There are five principal assignments of error in each case, all of which present for review the court's

judgment in sustaining the demurrers to the first and second counts of the indictments, by which ruling the construction of section 19 of the Criminal Code complained of is crisply presented.

THE STATUTE.

Section 19 of the Criminal Code (35 Stat. 1088, 1092), formerly section 5508 of the Revised Statutes, provides:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, * * * they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

HISTORY OF THE STATUTE.

Enacted May 31, 1870, with the Ku Klux clause ahead of the enjoyment clause (16 Stat. 140).

Readopted June 22, 1874, as section 5508 of Revised Statutes wherein the present arrangement was adopted by the commissioners who prepared the revision.

Survived the slaughter of the Civil Rights bill, not being repealed by the act of February 8, 1894 (28 Stat. 36–37).

Reenacted as section 19 of the Criminal Code by the act approved March 4, 1909, adopting the code

and making it effective on and after January 1, 1910. In the compilation of the code this section was given first place in chapter 3, which deals with "*Offenses against the elective franchise and civil rights of citizens*" (35 Stat. 1088, 1092).

ARGUMENT.

I.

Congress may, by appropriate legislation, protect any right or privilege arising from, created or secured by, or dependent upon the Constitution of the United States.

This proposition is no longer open to question in this court.

United States v. *Reese*, 92 U. S. 214, 217.
Strauder v. *West Virginia*, 100 U. S. 303, 310.
Ex parte Virginia, 100 U. S. 339, 345.
Ex parte Yarbrough, 110 U. S. 651, 663.
Logan v. *United States*, 144 U. S. 263, 293.
Hodges v. *United States*, 203 U. S. 1, 24.
United States v. *Mosley*, 238 U. S. 383, 386.

II.

The right of suffrage in the election of presidential electors, United States Senators, and Members of Congress, is such a right.

In *Ex parte Siebold*, 100 U. S. 371, 388, 389, this court stated:

> * * * It is the duty of the States to elect representatives to Congress. The due and fair election of these representatives is of vital importance to the United States. The government of the United States is no less concerned in the transaction than the State

government is. It certainly is not bound to stand by as a passive spectator, when duties are violated and outrageous frauds are committed. It is directly interested in the faithful performance, by the officers of election, of their respective duties. Those duties are owed as well to the United States as to the State. This necessarily follows from the mixed character of the transaction,—State and National. A violation of duty is an offense against the United States, for which the offender is justly amenable to that government. No official position can shelter him from this responsibility. In view of the fact that Congress has plenary and paramount jurisdiction over the whole subject, it seems almost absurd to say that an officer who receives or has custody of the ballots given for a representative owes no duty to the national government which Congress can enforce; or that an officer who stuffs the ballot box can not be made amenable to the United States. If Congress has not, prior to the passage of the present laws, imposed any penalties to prevent and punish frauds and violations of duty committed by officers of election, it has been because the exigency has not been deemed sufficient to require it, and not because Congress had not the requisite power.

The objection that the laws and regulations, the violation of which is made punishable by the acts of Congress, are State laws and have not been adopted by Congress, is no sufficient answer to the power of Congress to impose punishment. It is true that Congress has not

deemed it necessary to interfere with the duties of the ordinary officers of election, but has been content to leave them as prescribed by State laws. It has only created additional sanctions for their performance, and provided means of supervision in order more effectually to secure such performance. The imposition of punishment implies a prohibition of the act punished. *The State laws which Congress sees no occasion to alter, but which it allows to stand, are in effect adopted by Congress. It simply demands their fulfillment.* Content to leave the laws as they are, it is not content with the means provided for their enforcement. It provides additional means for that purpose; and we think it is entirely within its constitutional power to do so. It is simply the exercise of the power to make additional regulations. [Italics supplied.]

In *Ex parte Yarbrough*, 110 U. S. 651, 663, it is said:

It is not correct to say that the right to vote for a member of Congress does not depend on the Constitution of the United States.

The office, if it be properly called an office, is created by that Constitution and by that alone. It also declares how it shall be filled, namely, by election.

Its language is:

"The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most

numerous branch of the State legislature." Article I, section 2.

The States in prescribing the qualifications of voters for the most numerous branch of their own legislatures do not do this with reference to the election for members of Congress. Nor can they prescribe the qualification for voters for those *eo nomine*. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for members of Congress in that State. It adopts the qualification thus furnished as the qualification of its own electors for members of Congress.

It is not true, therefore, that electors for members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State.

* * * * *

If the government of the United States has within its constitutional domain no authority to provide against these evils, if the very sources of power may be poisoned by corruption or controlled by violence and outrage, without legal restraint, then, indeed, is the country in danger, and its best powers, its highest purposes, the hopes which it inspires, and the love which enshrines it are at the mercy of the combinations of those who respect no right but brute force on the one hand and unprincipled corruptionists on the other.

See also:

Aczel v. *United States*, 232 Fed. 652, and authorities there cited.
In re Coy, 127 U. S. 731, 752.
Ex parte Virginia, 100 U. S. 339.
Hodges v. *United States*, 203 U. S. 1.
Logan v. *United States*, 144 U. S. 263, 293.
Strauder v. *West Virginia*, 100 U. S. 303, 310.
United States v. *Reese*, 92 U. S. 214, 217.
Wiley v. *Sinkler*, 179 U. S. 58.
Swafford v. *Templeton*, 185 U. S. 487.
Felix v. *United States*, 186 Fed. 685, 688.

In *United States* v. *Mosley*, 238 U. S. 383, a conspiracy to prevent the counting of the vote of a citizen was charged. This court held such a conspiracy within the statute, saying (page 386):

> * * * It is not open to question that this statute is constitutional, and constitutionally extends some protection at least to the right to vote for Members of Congress. *Ex parte Yarbrough*, 110 U. S. 651; *Logan* v. *United States*, 144 U. S. 263, 293. We regard it as equally unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box.

In speaking of section 6 of the Enforcement Act of May 31, 1870 (16 Stat. 140), now section 19 of the Criminal Code, the court said (page 387):

> Section 6 being devoted, as we have said, to the protection of all Federal rights from conspiracies against them, naturally did not confine itself to conspiracies contemplating vio-

lence, although under the influence of the conditions then existing it put that class in the front. * * * The section now begins with sweeping general words. Those words always were in the act, and the present form gives them a congressional interpretation. Even if that interpretation would not have been held correct in an indictment under section 6, which we are far from intimating, and *if we can not interpret the past by the present, we can not allow the past so far to affect the present* as to deprive citizens of the United States of the general protection which on its face section 19 most reasonably affords. [Italics supplied.]

III.

The right to be free from bribery is included in the general right of suffrage, and is deducible from the above decisions; and is, therefore, together with certain other rights of a somewhat kindred nature, secured to the citizen and protected by section 19 of the Criminal Code.

The single, direct question is whether section 19 of the Criminal Code is effectual in the hands of the Federal Government for the punishment of a conspiracy to bribe qualified voters at a general election, where presidential electors, a United States Senator and Representative in Congress are chosen by the qualified electors of a State. The demurrers admit the facts alleged in the indictments, and it is for the court to determine whether a citizen (as candidate or honest voter) is injured and oppressed in the free

exercise and enjoyment of the right of suffrage, secured to him by the Constitution of the United States, within the meaning of section 19, by a conspiracy the object of which is to corrupt the electorate to the extent of outnumbering the honest votes with purchased ones.

This section deals with Federal rights guaranteed to citizens by the Constitution, and with *all* such Federal rights, and protects them in lump and to the limit. While it may have been conceived in the purpose to protect particular rights of a peculiar class of citizens, the language employed is plain and unambiguous, and Congress having committed itself to its employment is presumed to have intended to bestow full and absolute protection to the extent of such rights. *United States* v. *Mosley*, 238 U. S. 386.

That the language of section 19 is broad enough to cover a conspiracy to injure and oppress citizens in the free exercise and enjoyment of the constitutional right of suffrage by the use of bribery at a general election seems entirely clear. Can it be that the general words of section 19 are broad enough to protect the citizen who votes from personal violence or intimidation (*Ex parte Yarbrough*, 110 U. S. 651), and the election itself from corrupt count and false certification (*United States* v. *Mosley*, 238 U. S. 383), and yet not broad enough to protect the suffrage rights of a citizen from annihilation by the bribery of voters and the consequent undermining of the fabric of representative government? This question answers itself.

The right to have the election of Federal officials free from bribery and corruption arises from and depends on the Constitution of the United States for the same reasons as the right that such elections shall be free from intimidation and from false and fraudulent count. The power and the duty on the part of the National Government arises not solely from protection to the parties concerned, but from the necessity of the Government itself that a right which it has guaranteed shall in fact be protected, viz, the right that every citizen has to be assured by the Federal Government that the President, the Senators, and the Members of the House of Representatives will be elected by the votes of free electors, cast according to their free and unpurchased volitions.

Congress has undertaken to protect its citizens in the enjoyment of rights conferred by the Constitution of the United States, essential to the healthy organization of the Government, and chief among these is the right of having laws enacted and administered by those who do not owe their election to bribery or violence.

Referring to the right protected by section 19, this court in *United States* v. *Waddell*, 112 U. S. 76, said (p. 80):

> The right here guaranteed is not the mere right of protection against personal violence. This, if the result of an ordinary quarrel or malice, would be cognizable under the laws of

> the State and by its courts. But it is something different from that. It is the right to remain on the land in order to perform the requirements of the act of Congress, and, according to its rules perfect his incipient title.
>
> Whenever the acts complained of are of a character to prevent this, or throw obstruction in the way of exercising this right, and for the purpose and with intent to prevent it, or to injure or oppress a person because he has exercised it, then, because it is a right asserted under the law of the United States and granted by that law, those acts come within the purview of the statute and of the constitutional power of Congress to make such statute.

See also, *United States* v. *Lancaster*, 44 Fed. 885.

The distinction between acts of violence and plain methods of bribery and corruption was not before the court in the *Waddell case*, which presented ample evidence of the former mode of persuasion. The passage quoted, however, is clearly indicative of the gist of the offense created by the statute, and suggests the immateriality of the methods employed to attain the prohibited end. In fact, it may safely be asserted that no reported case has ever held employment of force or intimidation essential to an offense under section 19. (See *United States* v. *Mason*, 213 U. S. 115, 125; *United States* v. *Morris*, 125 Fed. 322; *United States* v. *Stone*, 188 Fed. 836, 840.)

In view of its origin, it seems clear that the ultimate purpose of section 19 was quite as much the regular and lawful election of Federal officers, free from bribery or corruption, as the personal security of the

voter. It would be a very inefficient instrument to this great end if it failed to guarantee the free choice of lawful qualified voters and the honest expression of the suffrage rights of the citizen, untainted and unsullied by the use of money. It is inconceivable that Congress intended to prohibit the lesser of the two evils while allowing the greater to flourish.

If the control of elections by Congress is to be more than nominal, the conclusion is inevitable that section 19 is a vital and necessary statute for the punishment of those who conspire to nullify the free will of the voters in the election of Federal officers. Election frauds by means of bribery are no less inimical to the selection of Federal officers by an untrammeled expression of the will of the voters than are acts of violence directed against their persons, or a bald refusal to permit them to prepare their ballots or place them in the box. And if, as has been decided in the *Mosley case, supra*, it is an offense under section 19 for an election board to conspire to make a false return, it is equally an offense for conspirators on the outside to mislead the board into making a false return.

(*a*) IT HAS BEEN HELD THAT FRAUD DIRECTED TO THE PREPARATION OR MANIPULATION OF THE BALLOTS INVADES THIS RIGHT. CONSEQUENTLY IT IS CERTAIN THAT FRAUD OPERATING THROUGH BRIBERY APPLIED TO VOTERS IS EQUALLY OFFENSIVE.

To so arrange the ballots that they will, because of the way they are printed or the confused fashion in which the names of the candidates are set out, nat-

urally be difficult to a particular set of voters is violative of the law because the so doing injures or oppresses them in the attempt to exercise the constitutional right to vote. *United States* v. *Stone*, 188 Fed. 836.

By a conspiracy to bribe at a general election, as the records in these cases fully disclose, a legal vote is wiped out as effectually as if the citizen had never voted—*i. e.*, forcibly restrained from going to the polls—or as if his vote had never been counted, which is precisely the *Mosley case*. What can be the difference between forcibly preventing a citizen from voting, or refusing to count his vote when lawfully cast, and permitting him to vote and then annihilating it by placing an illegal, purchased vote on top of it?

Here the argument is not only that the rights of the citizen were injured by the counting of bribed votes affecting the *result* of the election, but also that he was injured and oppressed in the enjoyment of his rights by having placed in competition with his legal vote the votes of other qualified voters which became corrupt by means of bribery. (See *State ex rel. Newell* v. *Purdy*, 36 Wis. 213, 220, 223; *Cowan* v. *Prowse*, 93 Ky. 156, 168–69.)

We submit that, if a citizen may vote, then his ballot must be counted at its full value, and others have no right to render it impotent and nugatory by putting bribed and illegal votes in competition with it; that a conspiracy to do so is a violation of section 19 of the Criminal Code.

(*b*) THIS RIGHT OF SUFFRAGE SECURED BY THE CONSTITUTION CONSISTS NOT MERELY OF THE RIGHT TO CAST A BALLOT, BUT EQUALLY OF THE RIGHT RESIDING IN EACH HONEST VOTER TO HAVE HIS VOTE OFFSET ONLY BY OTHER VOTES HONESTLY CAST.

This general right includes the right—

(*a*) To cast the ballot without personal violence or the threat of it. *United States* v. *Aczel*, 219 Fed. 917 (Dist. Ct.); *Aczel* v. *United States*, 232 Fed. 652 (C. C. A.).

(*b*) To have the votes counted as cast and certified as correctly counted. *United States* v. *Mosley*, 238 U. S. 383.

The Government asserts that this general right is furthermore inclusive of—

(*c*) The right to have honest votes measured against honest votes, and that there is an oppression with respect to this right whenever honest voters by their ballots must not only outnumber the honest adverse votes of their fellow citizens, but also such additional number as adverse corruptionists have venally purchased. *Commonwealth* v. *Rogers*, 181 Mass. 184, and cases cited.

In *Ex parte Yarbrough*, *supra*, the court said (pp. 662, 663):

> This duty does not arise solely from the interest of the party concerned, but from the necessity of the government itself, that its service shall be free from the adverse influence of force and fraud practiced on its agents, and that the votes by which its members of Congress and its President are elected shall be the

> *free votes of the electors*, and the officers thus chosen, *the free and uncorrupted choice of those who have the right to take part in that choice.*
>
> This proposition answers also another objection to the constitutionality of the laws under consideration, namely, that the right to vote for a member of Congress is not dependent upon the Constitution or laws of the United States, but is governed by the law of each State, respectively.
>
> If this were conceded, the importance to the general government of having the actual election—the voting for those members—free from force and fraud is not diminished by the circumstance that the qualification of the voter is determined by the law of the State where he votes. It equally affects the government, it is as indispensable to the proper discharge of the great function of legislating for that government, that those who are to control this legislation shall not owe their election to *bribery* or violence, whether the class of persons who shall vote is determined by the law of the State, or by the law of the United States, or by their united results. [Italics supplied.]

Here is a clear statement by this court that fraud is as objectionable as force, and that there must be a free election of freemen.

Similarly, in *Commonwealth* v. *Silsbee*, 9 Mass. 417, 418, it was held that "repeating" at a town meeting was an offense at common law. The court said:

> In town meetings, every qualified voter has equal rights, and is entitled to give one vote

for every officer to be elected. *The person who gives more infringes and violates the rights of the other voters,* and for this offense the common law gives the indictment. [Italics supplied.]

In *People* v. *Hoffman*, 116 Ill. 587, 599, it is said:

> Elections are free, where the voters are subjected to no intimidation or improper influence, and where every voter is allowed to cast his ballot as his own judgment and conscience dictate. Elections are equal, when the vote of every elector is equal, in its influence upon the result to the vote of every other elector,—when each ballot is as effective as every other ballot. * * * When the ballot box becomes the receptacle of fraudulent votes, the freedom and equality of elections are destroyed.

And in *Patterson* v. *Barlow*, 60 Pa. St. 54, 76, it is stated:

> That election is free and equal where all of the qualified electors of the precinct are carefully distinguished from the unqualified and are protected in the right to deposit their ballots in safety, and unprejudiced by fraud.

It is submitted, therefore, that each qualified elector has a right guaranteed by the Constitution to free, fair elections, which right is protected by section 19 of the Criminal Code.

Indeed this appears to be the proper inference from the *Mosley case*, for there is no reason to read that case as confining the right of suffrage to casting a ballot and having it counted. There is a right that

the vote shall have its proper weight and be placed in competition with those votes only which are fairly and rightfully cast. How does it benefit a citizen to have his vote cast and counted if its potency be entirely destroyed by votes induced away from their voluntary course and made adverse to his by bribery? Why should the right recognized in *Mosley's case* not be extended to the much more serious and subtle offense of bribery?

IV.

Any conspiracy to interfere with or prevent the free exercise or enjoyment of this constitutional right of suffrage is a violation of section 19 of the Criminal Code, not merely because of the injury to the citizen, but because he is injured with respect to the exercise of a right which the Constitution has interested itself to secure to him.

The statute is applicable for the protection of "any citizen" (all citizens) without any limitation. The rights or privileges protected by the statute are, however, limited. It embraces and protects only those which are secured to the citizen "by the Constitution or laws of the United States," but it does include all such rights whether constitutional or merely legal. *Felix* v. *United States*, 186 Fed. 685, 688.

Every citizen of the United States has such a right under the Constitution in connection with elections for Representative, etc. (*Mosley's case*, 238 U. S. 383). This right he can enforce himself by mandamus, injunction, or action for damages, as he successfully

did in *Wiley* v. *Sinkler*, 179 U. S. 58, and *Swafford* v. *Templeton*, 185 U. S. 487, and as subdivision 3 of section 1980, R. S., expressly provides.

Section 19 did not declare this right or provide for enforcing it. It declared protection to rights guaranteed by the United States, and provided punishment for any nullification of the free exercise of those rights. This declared right attaching to citizenship of the United States is that there shall be no conspiracy to injure the citizen in regard to its exercise with respect to elections. Congress has indicated how closely connected are the rights of the United States and of its citizens. (See *Logan* v. *United States*, 144 U. S. 263, 294, 295.)

It can not be denied that under the Constitution and laws of the United States citizens properly qualified have the right to submit their names to the electorate for presidential electors, United States Senators, and Representatives in Congress. The Government is so formed that citizens must be chosen for Federal offices, and of necessity it follows that the right given entitles the citizen to a fair ballot and an honest count, free from bribery or corruption of any kind.

In *United States* v. *Gradwell*, 243 U. S. 476, this court (p. 480) said:

> It must be admitted that the people of the United States and so their government, considered as a political entity, have an interest in and *a right to honest and fair elections.* [Italics supplied.]

The right exists to have the elections for Federal candidates conducted fairly, and is necessarily essential to the existence of the Government. All the rights given, created, or secured by the Constitution of the United States are not found in acts of Congress. (See *In re Neagle*, 135 U. S. 1; *In re Quarles*, 158 U. S. 532; *Motes* v. *United States*, 178 U. S. 458, 462; *Logan* v. *United States*, 144 U. S. 263; *Hodges* v. *United States*, 203 U. S. 1; *Rakes* v. *United States*, 212 U. S. 55; *United States* v. *Lancaster*, 44 Fed. 885, 896; *Felix* v. *United States*, 186 Fed. 685.)

V.

The methods or means employed in carrying out the conspiracy to violate the right and whether or not they also offend State laws is immaterial.

What the Government is attempting to punish by the indictments in these cases is a conspiracy to injure and oppress citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States; *e. g.*, the right to participate in an election free from bribery which nullifies the proper weight of their votes. Under section 19 it is immaterial that bribery is the sole element of such a conspiracy. The test is whether or not the citizen has been injured or oppressed in the free exercise or enjoyment of a right secured by the Constitution and laws of the United States, and not whether the means employed to accomplish that end may or may not be otherwise criminal under the laws of the State or of the United States.

If in pursuance of a conspiracy a citizen were seized on his way to the polls on election day, and restrained of his liberty to prevent him from voting, it would be easy to argue in a prosecution under section 19 that this was a subterfuge, and that the United States was attempting to assume jurisdiction of crimes cognizable by the State, to-wit, assault and battery and kidnapping; and it would be just as plausible to say that because the United States had no jurisdiction to punish assault and battery and kidnapping, therefore it had no jurisdiction to punish a conspiracy where a citizen was to be deprived of his constitutional rights in those ways, or, as in the instant cases, by means of bribery. Such an argument is wholly fallacious.

VI.

The opinion of this Court in the Gradwell case (243 U. S. 476) considered and applied.

The recent case of *United States* v. *Gradwell*, 243 U. S. 476, is not decisive of this appeal, for the reason that it does not touch the question here presented. That opinion does hold that section 37 of the Criminal Code has no application to elections, reaching that result partially by means of a recital of the origin and history of the statute, and partially on reasoning deemed sufficient to force the conclusion that the bribery of voters does not constitute a fraud on the United States as a political entity.

The *Gradwell case* does furthermore hold that candidates in State party primaries have not at stake in such elections those rights which are granted and

protected by the Constitution or laws of the United States. But the *Gradwell case* does not hold that section 19 of the Criminal Code is inapplicable to or fails of protection to the constitutional and legal rights of citizens appertaining to the exercise of suffrage in general Federal elections. Quite to the contrary, the *Gradwell case* approvingly recites that section 19 is applicable to certain conspiracies against the Federal elective franchise, giving the *Mosley case* as authority for this statement; adding, however, that the scope of the law can not be extended to the limit of making it an agency for enforcing a State primary law, particularly such an one as was there shown to have been enacted by West Virginia.

This opinion can not be distorted into a decision undermining the Mosley opinion, or into an announcement that section 19 is not an effective agency for protecting the constitutional rights of citizens of the United States against conspiracies aimed at the denial of those rights, regardless of whether the acts done in furtherance of the conspiracy have likewise been outlawed by other enactments or not.

Again, it is noteworthy that two of the defendants convicted of a conspiracy under section 19 of the Criminal Code in *Aczel* v. *United States*, 232 Fed. 652 (1916), and sentenced to imprisonment in the United States penitentiary at Leavenworth, Kans., filed in this court on June 4, 1917, a motion for leave to file petitions for writs of habeas corpus, upon the ground, *inter alia*, that the conviction and sentence were *coram non judice* and void, and that their cases

should be governed by the rule laid down in the *Gradwell case. However, the court denied the motion upon the authority of United States v. Mosley.* (See 244 U. S. 650, 651.)

CONCLUSION.

It is respectfully submitted that the judgment of the District Court, sustaining the demurrers to counts one and two in the indictments, was erroneous and should be reversed.

WILLIAM C. FITTS,
Assistant Attorney General.

DECEMBER, 1917.

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United States of America, in the Supreme Court.

THE UNITED STATES, PLAINTIFF IN ERROR, *vs.* EDWARD BATHGATE, ET AL., DEFENDANTS IN ERROR,	No. 575
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THE UNITED STATES, PLAINTIFF IN ERROR, *vs.* ROBERT URICHO, ET AL., DEFENDANTS IN ERROR,	No. 580

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION.

BRIEF FOR DEFENDANTS IN ERROR.

Statement of the Case.

Defendants in error in each of the above cases were indicted in the District Court of the United States for the Southern District of Qhio, Western Division, at

the October Term, 1916, under Sections 19 and 37 of the Criminal Code of the United States for an alleged conspiracy to bribe electors and thereby to injure, oppress, threaten and intimidate candidates for Federal offices, and voters in the free exercise and enjoyment of certain alleged rights and privileges alleged to be secured to them by the Constitution and Laws of the United States, and for alleged conspiracy to defraud the United States by corruptly conspiring to purchase and debauch a Federal Election by bribery.

The indictments in all of the cases are identical, except as to names, and contain in each instance three counts, of which the first two purport to be drawn under Section 19 of the Criminal Code, and the third under Section 37 thereof.

The defendants in error in each case demurred to each of the several counts and the court sustained their demurrers thereto. To this ruling of the court the Government now brings proceedings in error in this court.

PART ONE.

ANALYSIS OF THE INDICTMENT.

At the outset it is desirous to examine the indictments with a view to ascertain, so far as is possible, exactly what is charged therein as a *matter of fact*, in order to test the question whether as a *matter of law* the indictments and the various counts thereof properly charge any offense against the United States.

The first and second counts of the indictments purport to be drawn under Section 19 of the Penal Code, which is as follows:

"Section 19. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or Laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

I

The First Count.

The first count of the indictments may be said to be divided in four distinct divisions. The first three divisions are identical in language charging that the citizens alleged to have been injured, etc., are the Democratic candidates for Presidential Electors, mentioned in the first division, the Democratic candidate for United States Senator, mentioned in the second division, and the Democratic Representative in Congress, mentioned in the third division. Without quoting in full these three divisions of the first count, the allegations are in substance as follows:

"The Grand Jurors charge that defendants-in-error and others, throughout the period from October 1st, to November 7th, 1916, at Hamilton County, Ohio, did feloniously conspire, etc.,

to injure, oppress, threaten and intimidate certain Democratic Candidates for Presidential Electors, Senator and Representative, in the free exercise and enjoyment of certain rights and privileges secured to them by the Constitution and laws of the United States, as follows to-wit:

First: Of being Candidates for Presidential Electors, Senator and Representative.

Second: Of having qualified voters vote at said election.

Third: Of having only qualified voters vote for Presidential Electors, Senator and Representative.

Fourth: Of having only votes of qualified voters cast, accepted, received, counted and returned.

Fifth: Of having their election or rejection decided and determined by voters who had not been bribed or votes which had not been purchased.

Sixth: Of having Precinct Boards of Election make true, correct and accurate count and return of legal and only legal votes cast by qualified voters.

(*First*)—By bribing a number of otherwise *qualified* voters and promising them in advance, sums of money to vote against said Presidential Electors, Senator and Representative, and in favor of their opponents, and by causing said voters to purposely and intentionally cast their votes at said election. Voters purchased and bought were certain persons, naming them.

(*Second*)—By causing the Precinct Boards of Election to accept and receive such illegal votes and make untrue, inaccurate and incorrect count and return of votes cast at said election by including same in said count and return.

And that in pursuance of said conspiracy, defendants *injured* said Candidates for Presidential Electors, Senator and Representative, and bribed a large number of qualified voters and caused said illegal and wrongful votes of certain persons, naming them, to be cast and counted at the Election, and caused the Election Boards in the various Precincts to accept such illegal votes and make untrue, incorrect and inaccurate count and return of votes cast at said election by including same in said count and return; that James E. Campbell, et. al, were candidates for Presidential Electors, Atlee Pomerene, candidate for Senator and Edward Brink, candidate for Representative at said election and their names appeared on the ballot to be voted for, each being duly qualified as candidates as aforesaid."

The fourth division of the first count alleges the citizens injured to be, "each and all of the qualified electors who might actually vote at said election in each of the voting precincts of said First Congressional District, and in each of the voting precincts of the State of Ohio." In substance this division of the First Count is as follows:

"And the Grand Jurors further charge that defendants-in-error, and others, as part of the conspiracy aforesaid, did conspire to injure, oppress, threaten and intimidate certain citizens

of the United States, to-wit; each and all of the qualified electors who might actually vote at said election in each of the voting precincts of the said First Congressional District and in each of the voting precincts of the State of Ohio, in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States.

First: Of the right to have votes and ballots for Presidential Electors, United States Senator and Representative in said District, confined to votes and ballots of legal and qualified voters.

Second: Of the right to have the votes and ballots cast and counted at said election for Presidential Electors, etc., confined to those cast by electors who had not been bribed to sell their votes.

Third: Of the right to have each lawful vote and ballot for Presidential Electors, etc. counted at its full strength, unaffected and unimpaired by the casting of votes by men who had been bribed by money, and by counting said votes or any of them.

Fourth: Of the right to have election Boards accept and receive only lawful votes and make true and correct count and return of only lawful votes cast by qualified voters for Presidential Electors, etc.

By bribing a large number of otherwise qualified voters and promising them money in advance to cast their ballots for Presidential Electors, United States Senator and Representative in Congress, and by causing the Election

Boards to accept and receive said illegal votes and make untrue, incorrect and inaccurate count and return thereof by including said illegal votes in said count and return. The men bribed were certain persons, naming them.

And in pursuance of said conspiracy, defendants *injured* each and all the qualified Electors, and so planned, bribed and purchased votes of other qualified voters, naming them, and caused them to vote for Presidential Electors, etc., and caused Election Boards to accept and receive said illegal votes and make untrue, incorrect and inaccurate return thereof, contrary to the form of the statute, etc.

II

Second Count.

The Second Count of the indictment is in many respects similar to the First Count. In substance the second count is as follows:

"The Grand Jurors further present that on November 7th, 1916, *an election was held in the State of Ohio under the laws thereof* and the laws of the United States, for the election of twenty-four Presidential Electors, and United States Senator and Represenative in Congress from the First District, which included a part of Hamilton County, Ohio;

That at the said election James E. Campbell, and others, were candidates for Presidential Electors, Atlee Pomerene, and others, candidates for United States Senator, and Edward H. Brink, and others, candidates for Representative in Congress;

That all of said candidates for Presidential Electors, etc. had been regularly and lawfully chosen and nominated to be such candidates at a primary election held *under the laws of the State of Ohio*;

That from the time of said primary election to and including the 7th day of November, 1916, each was duly qualified under the Constitution and laws of the United States *and the State of Ohio*, to be a candidate for their respective offices;

And the Grand Jurors further present that the defendants, and others, of said Hamilton County and Congressional District, being hereinafter referred to as Defendants, continuously and throughout the period from the 1st day of October, 1916, to and including the 7th day of November, 1916, conspired with other persons unknown to the Grand Jurors, *to injure and oppress certain citizens* of said State and of the United States in the free exercise and enjoyment of certain rights and privileges secured to them respectively by the Constitution and laws of the United States, to-wit, the right and privileges appertaining to several candidates and all legally qualified voters at said election voting in said Congressional District.

First: Of having none of such *legally qualified* voters unlawfully or fraudulently prevented from voting at said election for such candidates as they chose to vote for.

Second: Of having only legal votes cast at said election for any of such candidates, and accepted, counted and returned by the said Election Boards of said County.

Third: Of having such election determined by votes not influenced by bribery, fraud or the wrongful use of money.

And that a description of the means and methods whereby said citizens were so *injured and oppressed* in the free exercise and enjoyment of their rights and privileges by defendants is as follows, to-wit:

Said defendants, in order fraudulently to favor certain candidates, to-wit, The Republican Presidential Electors, Myron T. Herrick, Candidate for United States Senator, and Nicholas Longworth, Candidate for Representative, and secure the election of said candidates instead of the election of the candidates first named, without regard to the true preferences and choice of the voters of said Congressional District, unlawfully were to prevent by force, intimidation and fraud, to be used and practiced upon them by said defendants, as many of the legally qualified voters who were desirous of voting for the candidates first above mentioned, from voting at said election for those candidates, as the said defendants could prevent by those means; and were to procure by bribery, payment and promise of money to them, others of said legally qualified voters desirous of voting for said candidates instead of the candidates first above mentioned, and thereby procure the acceptance, receipt, counting return of such illegal votes by the Election Boards, and of such votes so influenced by bribery, fraud and improper use of money, as aforesaid.

And so the Grand Jurors charge Defendants-in-error, and others, did unlawfully and felon-

> iously conspire to *injure and oppress* citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States, contrary to the form of the statute, etc.

From the above it would seem that the persons alleged to have been injured, etc., are "certain citizens of Ohio and the United States," who are alleged to have been "injured and oppressed" in the free exercise and enjoyment of certain rights and privileges secured to them respectively by the Constitution and laws of the United States; that is to say, the right and privilege appertaining to said several Candidates, and all the legally qualified voters at said election *voting in said Congressional District.*

The indictment further alleges in substance, that the defendants "without regard to the true preference and choice of said legally qualified voters of said Congressional District, unlawfully were to prevent by force, intimidation and fraud, to be practiced *upon them* by said defendants, as many of said legally qualified voters of said Congressional District who were desirous of voting for" the Democratic Candidates, "from voting at said election for those candidates, as said defendants could prevent by those means."

The indictment also alleges that the defendants "were to procure by bribery, payment and promise in advance of or at said election of payment of money to them for so doing, others of said legally qualified voters desirous of voting" for the Democratic Candidates "to vote at said election for other candidates instead of said candidates first above mentioned, and thereby procure the acceptance, receipt and counting in due

course by said election boards of such illegal votes and of such votes so influenced by bribery, fraud and the improper use of money."

From the reading of the indictment it is uncertain who the "certain citizens" mentioned are. Their rights are described, but they are not otherwise identified. Whether the "certain citizens" referred to are (1) all the Democratic candidates and all the voters who voted at the election in the First Congressional District, or (2) the Democratic voters of the First Congressional District who were to be prevented, from voting for the Democratic Candidates, or (3) the Democratic voters who were to be bribed, does not appear.

At this time and solely for the purpose of argument, we will assume that the "certain citizens" referred to, include the first mentioned class, namely, all of the Democratic Candidates for Federal offices and all of the voters, who voted at the election mentioned, in the First Congressional District.

Striped of their verbiage, the charge in the first two counts of the indictment therefore amounts to this; That the defendants conspired to injure, oppress, threaten and intimidate all the candidates for Federal offices at the election mentioned and all the qualified voters of the First Congressional District and the State of Ohio, by conspiring to injure them in the free exercise and enjoyment of their rights as citizens under the Constitution and laws of the United States, by bribing a large number of qualified voters at said election.

While the Second Count contains some allegations intimating use of force, the Government frankly stated to the Court at the time the demurrers were heard, that no use of force was claimed. In his opinion Judge Hollister further said (Case No. 575, Record p. 32):

> "So far as the practical substance of trials under these indictments is concerned, the sole issue is whether or not the defendants were guilty of bribery at the last general election and no subtle legal distinctions or refinements can make anything else out of it."

The brief of the Government (p. 4) in substance adopts this same view. In the last analysis, the fundamental wrong sought to be punished in both counts of the indictment was an alleged conspiracy to bribe voters at a state election of federal officers.

III

Third Count

The third count of the indictment purports to be drawn under Section 37 of the General Code, and to charge a conspiracy to defraud the United States in various manners by bribing voters at election in which federal officers were chosen, The Government concedes (Brief p. 4) that this count falls within the terms of the *United States v. Gradwell*, 243 *U. S., p.* 476. It is therefore unnecessary to consider this count further.

Part Two.

RULES AS TO CONSTRUCTION OF PENAL STATUTES.

Section 19 of the Penal Code of the United States above quoted is a penal statute and is subject to the strict rule of interpretation and construction, to which all such statutes must be subjected.

Section 19 is broad in its terms and yet notwithstanding this fact, cannot be said to have unlimited application. As Mr. Justice Brewer in the case of *James vs. Bowman*, 190 U. S., 127, 141, said:

> "It would certainly be dangerous if the Legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the government."

The interpretation given the statute by the Court, must be so clearly expressed by the enactment itself that the citizens might be said to have fairly understood that which is within their terms and that which which is not. As was said in the case of *United States vs. Brewer*, 139, U. S., 278, 288:

> "Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid. *United States v. Sharp*, Pet. C. C., 118."
>
> "Before a man can be punished, his case must be plainly and unmistakably within the statute. *U. S. vs. Lacher*, 134 U. S., 624, 628."

In construing former Section 5508, now Section 19, the court, in holding that the particular conspiracy to oppress and intimidate citizens of the United States did not come within the purview of the terms of the Statute, in the case of *United States vs. Moore*, 129 Fed., 630, 635, 636, said;

> "All who value the blessings of justice administered without respect to persons, and who love liberty regulated by law, will share in the re-

gret that acts like those disclosed in the indictment can happen in our midst, and that apprehension exists that the right here claimed, which is dependent solely upon the laws of Alabama, will not be vindicated and enforced in the tribunals of this State. *Whether these apprehensions be well or ill founded, it would be a less evil to society to leave the wrong unredressed than to usurp jurisdiction to punish the offenders here.*" [Italics supplied.]

The definition of an offense and the classification of offenders are legislative, not judicial, functions, and a Court will not extend the terms of a statute by judicial interpretation to those not beyond a reasonable doubt within the class declared punishable. In the case of *Erbaugh v. United States*, 173 Fed., 433, 435, the Court said:

> "The definition of an offense and the classification of offenders are legislative, not judicial, functions, and one who was not *beyond reasonable doubt* within the class declared punishable by the expressed will of Congress may not be brought within that class after the event by interpretation." [Italics supplied.]

In *Field vs. United States*, 137 Fed., 6, 8, the Court said:

> "A man ought not to be punished unless he falls plainly within the class of persons specified by such Statute. An act which is not *clearly* an offense by the express will of the legislative department must not be made so after its commission by a broad construction adopted by the judiciary . The definition of the offense and the classification of offenders are legislative and not

judicial functions, and where, as in the case at bar, a penal statute is plain and unambiguous in its terms, the courts may not lawfully extend it, by construction, to a class of persons who are excluded from its effect by its terms, because, in their opinion, the acts of the latter are as mischievous as those of the class whose deeds the statute denounces."

A crime cannot be created by *ex post facto* liberality of definition, for *ex post facto* law, by judicial construction, is as pernicious as *ex post facto* legislation.

Harrison vs. United States, 200 Fed., 662, 667.

Erbaugh vs. United States, 173 Fed., 433, 435.

While it is true that in an interpretation of statutes, the Court, in cases of uncertainty, is not restricted to the literal meaning of the words and phrases therein expressed, but may construe the statute in the light of the legislative intent expressed therein, at the same time it is not to be said that the express legislative intent, shown or declared by the adoption of a definite policy by the enactment of a new statute or the repeal or refusal to repeal the old ones, is to be disregarded, merely because the crime sought to be punished is serious and punishment cannot be meted out if express legislative policy is to be heeded.

United States vs. Lacher, 134 U. S., 624, 628.

James vs. Bowman, 190 U. S., 127, 141.

PART THREE
NEITHER BRIBERY NOR A CONSPIRACY TO BRIBE ARE CRIMES UNDER THE LAWS OF THE UNITED STATES AND CANNOT BE PUNISHED BY THE UNITED STATES UNDER PROVISIONS OF SECTION 19 OF THE PENAL CODE.

V.
THE FUNDAMENTAL WRONG SOUGHT TO BE PUNISHED IS BRIBERY AT A FEDERAL ELECTION.

As heretofore pointed out, the fundamental wrong apparently sought to be punished by the indictment is a conspiracy to bribe voters at an election in which Federal officers were to be chosen.

There is no law of the United States which in terms defines and punishes such conspiracy under any existing Federal Statute. In fact, as was said by Judge Hollister, (Case No. 575, Record p. 28),

> "Until the Gradwell case, no prosecution has ever been instituted (Under Sec. 19) in the Courts of the United States, so far as this Court is aware, to punish bribery at a State Election for members of Congress, in the entire history of the United States."

The effort of the Government, therefore, is not to rely upon any Federal law which in terms defines and punishes either a conspiracy to bribe or bribery at an election. It is seeking, rather to stretch the provisions of Section 19, so as to cover the lack of statutory enactments; and thus, in the language of Mr. Justice Clark in the case of *U. S. v. Gradwell*, 243 U. S., 476, at p. 486,

"an attempt is being made to make a new application of an old law to an old type of crime." Although Section 19 has existed for more than forty-seven years, it has never been claimed that it included within its terms the penalty for the punishment of either bribery or a conspiracy to bribe voters at a State election for members of Congress or Presidential Electors. The reasons for this are to be found in the announced policy of Congress of leaving all matters relating to the conduct of elections to the several States, and in the words of Section 19 itself.

IV.
THE LAWS OF THE UNITED STATES AS TO BRIBERY WERE REPEALED IN ACCORDANCE WITH THE POLICY OF CONGRESS TO LEAVE THE CONDUCT OF FEDERAL ELECTIONS TO THE STATES.

The framers of the Constitution vested the discretionary power over elections primarily in the State Legislatures, and ultimately in the National Legislature, by virtue of the provisions of Section IV, Article 1, of the Constitution of the United States, as follows:

> "The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but Congress may at any time make or alter such regulations, except as to the places of choosing Senators."

The history of Congressional legislation under the powers thus conferred is fully set forth in the dissenting opinion of Mr. Justice Lamar in the case of *United*

States v. Mosley, 238 U. S., 383, 388 and in the very recent opinion of Mr. Justice Clark in the case of *United States v. Gradwell*, 243 U. S., 476 at page 482, in which the court says (p. 5):

> "Although Congress has had the power of regulating the conduct of congressional elections from the organization of the Government, our legislative history upon the subject shows that, except for about twenty-four out of one hundred and twenty-eight years since the Government was organized, it has been its policy to leave such regulations almost entirely to the States, whose representatives Congressmen are."

In finally summing up the present status of congressional legislation the court said: (p. 485) It is

> "clearly established that the policy of Congress for so great a part of our constitutional life has been, and now is, to leave the conduct of the election of its members to state laws, administered by state officers, and that whenever it has assumed to regulate such elections it has done so by positive and clear statutes, such as were enacted in 1870."

There can be no question but that bribery at elections is one of the matters included within the "regulations" which "Congress may at any time make or alter." In speaking of the congressional enactments of 1870, the court, in the case of *United States v. Gradwell*, supra, at page 483, said:

> "These laws provided extensive regulations for the conduct of congressional elections. They made unlawful, false registration, bribery, voting without legal right, making false returns of votes cast, interfering in any manner with offi-

cers of elections and the neglect by any such officer of any duty required of him by State or Federal law;"

Of the Act of 1870, Section 5507, 16 Stat. 141, making it a crime among other things, for any person to "prevent, hinder, control or defraud another person from exercising the right of suffrage * * * by means of * * * bribery * * * ", was not repealed by the Act approved February 8th, 1894, 28 Stat., 36, but was declared unconstitutional in the case of *James v. Bowman*, 190 U. S., 127, and was never subsequently re-enacted.

The conclusion is therefore irresistable that legislation relating to bribery at elections is one of the matters embraced within the general conduct of elections to be regulated by state laws.

If this is true, the rights of the citizen voter with reference to bribery at elections are rights derived wholly from the states, and not in any part from the constitution and laws of the United States.

Whether or not Congress is pursuing the right policy is a legislative question. The extended comment of this court quoted in the Government is brief from *Ex parte Siebold*, 100 U. S., 371, 388, 389, and *Ex parte Yarbrough*, 110 U. S., 651, 663, was made at a time when the "Enforcement Act" was still the law, and relates to a different policy than that to which Congress now commits itself. These cases decided under these radically different conditions can be of no assistance in the present case.

Stated in a few words, the logical facts are these: The present policy of Congress leaves to the States the establishment of the "regulations" for the conduct of elections for Federal officers, and bribery at elections is one of the matters to be regulated by the States.

From this it must follow, therefore, in the light of this general policy, that no subtle argument or ingenious reasoning can read into Section 19 that which the controlling policy of Congress, fully recognized by this Court, declares is not to be found there.

The Government argues that bribery at an election affects the potency of the citizen voter's vote, and that, by reason of that fact, he is injured and oppressed within the meaning of Section 19. In other words, that bribery injures the vote of the citizen voter by reducing its strength in contributing to the result of the election. When this is admitted, we are brought no nearer a conclusion. We are still confronted with the question as to whether such an injury is embraced within the terms of Section 19; and this question is answered by the fact that under the existing policies of Congress the remedy for such injuries is left to State laws and the administration of them by State officials.

The Government further argues, in effect, that the right to vote *per se* entitles the citizen to a fair ballot and an honest count, free from bribery or corruption of any kind. If this is true, then the mere maintenance of Section 19 upon the Statute Books of the United States amounts to a re-enactment of the "Enforcement Act" of 1870, and a denial of the policy of Congress relating to elections, which has been recognized by this Court. Logically pursued to its conclusion, the violation of every State enactment safeguarding the honesty and fairness of elections is perforce of this argument incorporated into the laws of the United States. Under this view, all that would be necessary to be proved was, that the violation, either contemplated or completed, had the requisites of a conspiracy.

In the case at bar, as in the case of *United States v. O'Toole*, 243 U. S., 476, the Ohio Primary Election Law passed February 2nd, 1914 and approved February 14th, 1914, 104 O. L., 8, superseded the act of Congress of June 4th, 1914, 38 U. S., Stat. at Large, 384, which was enacted by Congress for the conduct of the nomination and election of Senators until other provision should be made by state legislation.

Relative to the law with regard to the election of Presidential Electors it was said by Mr. Justice Gray in *In re Green*, 134 U. S., 377, 380,:

> "Congress has never undertaken to interfere with the manner of appointing electors, or, where, (according to the now general usage) the mode of appointment prescribed by the law of the State is election by the people, to regulate the conduct of such election, or punish any fraud in voting for electors; but has left these matters to the control of the States.

This case was decided on March 24th, 1890 before the repeal of the sections of the "Enforcement Act," and at a time when Section 19 was in substantially its present form, and the situation as found to exist then by Mr. Justice Gray, has not been altered to the present time.

V

Neither Bribery nor a Conspiracy to Bribe at a Federal election, Injure the Citizen in Enjoyment of Rights Secured under the Constitution or Laws of the United States, and Neither can be Punished under Section 19 of the Penal Code.

Section 19 is the only section now in force of all the legislation enacted subsequent to the Civil War, which

can be said to have any bearing upon any matter pertaining to elections.

It cannot be urged, however, with the slightest show of reason that this statute is applicable to the facts as set forth in the first and second Counts of the indictment.

Section 19 punishes a conspiracy;

(1) To injure, oppress, threaten or intimidate any citizen,

(2) In the free exercise and enjoyment of any right or privilege, secured to *him* by the constitution and laws of the United States.

Let us ascertain what the full purport of this language is,—

(1) *To injure, oppress, threaten or intimidate any citizen.*

The indictment simplifies the inquiry in as much as relating to bribery, it alleges only that the conspiracy to bribe "injured" the voters and candidates named.

What does the word "injure," as employed in the statute and used in the indictment mean?

In speaking of these provisions of Section 19, Judge Rose, in the case of *United States v. Stone*, 188 Fed. Rep. 836, 839, said:

> "The statute is highly penal. The punishments prescribed by it are more severe than many of those which are prescribed for other election offenses. In such a statute doubtful words are not to be extended beyond their natural meaning in the connection in which they are used. (page 839) * * * *
>
> "In this case, the government does not ask that the word "injure" shall be given any other construction than that which is usually has.

"Unlawfully to deprive a citizen of the United States of his right to vote at a congressional election is to injure him in any ordinary use of the word "injure."

"The Supreme Court has said of this statute that it covers any conspiracy to prevent the exercise of any of the rights protected by it, or to throw obstruction in the way of exercising such right, or for the purpose or with intent to prevent its exercise. *United States v. Waddell*, 112 U. S. 80.

"It does not follow that such a construction of the statute will make it the all-embracing enactment that defendants describe. A voter who votes for a Republican candidate for Congress may be in a very general sense injured by a fraudulent practice which results in the return of a Democratic candidate which would not otherwise have been returned. Indeed, every citizen, whether he voted for the Republican or the Democratic candidate, or for neither, might be said to be injured by a fraudulent return. It does not follow, however, that either the Republican voter or the citizens in general are thereby injured in the sense meant by this statute. A public nuisance injures all the public. For all that, it is only some person who is injured in some way differing from that of the great body of the public who at common law may maintain an action for the damage resulting from such nuisance. It is not every wrongful act which alters the result of the election which is punishable under the section in question. *It must be some act which is intended to*

prevent some citizen or citizens from exercising their constitutional rights." (page 840.) [Italics supplied].

Judge Rose had sitting with him in the case Judge Morris, District Judge, who concurred in the above opinion.

It thus appears that to bring the case within the terms of Section 19, the injury sought to be punished must be personal and individual and not a mere public injury, which affects not only the voters of a particular congressional district or the entire state but, in a broad sense, the voters of all the States, If this were not true every known violation of the election laws of Ohio and each of the several states, which tended in theory or fact to affect the result of a congressional election, could be punished under this Section, if participated in by two or more persons, thereby nullifying by judicial construction the clearly established policy of Congress.

It is in this purely personal and individual character of the injury suffered that the case of *United States vs. Mosley*, 238 U. S., 383, is to be distinguished from the instant case. As Judge Hollister said in his opinion, (Case 575, Record p. 28):

> "Moreover, an analysis of the Mosely case shows the gravamen of the charge was not the injury to the voter through fraud affecting the result of the election. The injury to him was in not counting his vote, and the injury was to him alone, and for that reason only. It so happened that the votes in eleven precincts were not counted; but the principle would be the same if the officers had, by conspiring to that end, omitted to count one vote."

(2) *In the free exercise and enjoyment of any right or privilege secured to him by the Constitution and laws of the United States.*

It is said in the indictment that the various candidates and voters named therein were injured in their "rights," which are variously set forth, by the alleged conspiracy of the defendants to bribe certain electors named in the indictment and others whose names are unknown. In other words the voters and candidates named are alleged to have the "right or privilege" to have the election free from bribery.

Obviously, the "right or privilege" mentioned in the statute and referred to in the indictment must be a *legal* right, secured by the Constitution and laws of the United States, as distinguished from a *moral* right.

Obviously the voter may have a moral right to have an election free from bribery, but the question is, do the Constitution and Laws of the United States transform the moral right into a legal right.

As Judge Hollister said, (Case 575, Record p. 30):

> "Of the classes named in counts one and two, whose rights are said to be affected by the alleged illegal acts complained of, are also all the voters of the first congressional district. It is said that logically the rights of these voters, as well as the rights of candidates, include not only the free exercise of voting and the counting of their votes, but also an election free from the corruption of bribery, for otherwise their votes would not be effective. If logic were the test, the Government's position would be strong, but logic cannot prevail as against clear congressional intention, the latest declaration of which, as relating to elections, is found in the *Gradwell* case."

Furthermore, the policy of the Courts with reference to the strict construction of penal statutes will not permit the Government to start with the proposition that every citizen has a right to vote and by successive deduction extend the primary legal right to a secondary moral right; namely, the right to an election free from bribery.

As Judge Hollister said in his opinion, (Case 575, Record p. 31):

> "While we may by construction say first, a citizen has a right to vote, and, by construction from this say, second, a voter has a right to have his vote counted, and by construction from this, third, that, therefore, he has a right to an election free from bribery, we are still not far advanced toward the conclusion that Section 19 was passed to protect the voter in the right to have an election free from bribery. It will not do, by successive deductions of this kind, to construe a man into the penitentiary, however heinous his offense may be. There must be a plain and unmistakable congressional intention to make what he has done an offense against the United States. *United States v. Lacher*, 134 U. S., 624. 628.

VI

RIGHTS AND PRIVILEGES SECURED TO CITIZENS IN FEDERAL ELECTIONS BY THE CONSTITUTION AND LAWS OF THE UNITED STATES.

It has been shown that neither the United States nor its citizens has any existing right or privilege under the

Constitution and laws of the United States to have a Federal election free from bribery. This being true, the question naturally arises as to what rights or privileges of the citizens, with respect to Federal elections, Section 19 protects.

In the indictment the citizen is referred to with respect to two different relations which he bore to the election in question: first, as a voter and, second, as a candidate.

In discussing the provisions of Sec. 19, it is therefore only necessary to discuss rights and privileges of citizens with respect to the phases of citizenship brought in issue by the indictment. In other words the questions are:

First: What are the existing "rights and privileges" of the qualified voters mentioned in the indictment at a Federal election, secured to them under the Constitution and laws of the United States?

Second: What are the rights and privileges of the candidate with respect to the same matters?

RIGHTS AND PRIVILEGES OF THE VOTER

Under the decisions of the various Federal Courts, it would appear that, with reference to Federal elections, the citizen who possesses the qualifications to vote, has the "right and privilege" to do so. This it has been held is "a right or privilege *secured to him* by the Constitution and laws of the United States" within the terms of Sec. 19.

Ex parte Yarbrough, 110 U. S. 651;
Wiley v. Sinkler, 179 U. S. 58;
Stafford v. Templeton, 185 U. S. 487;
United states v. Moore, 129 Fed. 630;
Felix v. United States, 186 Fed. 685;

United States v. Stone, 188 Fed. 836;
United States v. Aczel, 232 Fed. 652;
Mosley v. United States, 238 U. S. 383

Furthermore having the right to vote, the voter also has the right to have his vote counted. *Mosley v. United States*, 238 U. S. 383.

These are the sum total of the "rights and privileges" of the "voter" secured to him by the Constitution and laws of the United States with reference to Federal elections. His rights begin and end with his own vote.

The most convincing authority for this proposition is the very words of the statute in question, "If two or or more persons conspire to injure, oppress, threaten or intimidate *any citizen* in the free exercise or enjoyment of any right or privilege *secured to him* by the Constitution and laws of the United States," etc.

All therefore that the citizen voter has a right to demand at Federal elections under the Constitution and laws of the United States is the free exercise and enjoyment of his right or privilege to cast his vote and have his vote counted.

This is the sole right or privilege that under Sec. 19, he can claim to hold free from a conspiracy to injure, oppress, threaten and intimidate.

With reference to the vote of his fellow citizen, he has nothing to say. When his vote is freely cast and counted, the free exercise of his "right and privilege" under the Constitution and laws of the United States has been accomplished. If other citizens are injured, oppressed, threatened or intimidated, and he has not been so treated, his rights under the Constitution and laws of the United States have not been injured.

If others are willing or unwilling victims of fraudulent practices, he is not thereby hindered or prevented from freely exercising the rights "*secured to him.*"

Judge Rose in *United States v. Stone*, 188 Fed. Rep. 836, at page 838, very aptly states the proposition:

> "A voter who votes for a Republican candidate for Congress may be in a very general sense injured by a fraudulent practice which results in the return of a Democratic candidate, which would not otherwise have been returned. Indeed, every citizen, whether he voted for the Republican or the Democratic candidate, or for neither, might be said to be injured by a fraudulent return. It does not follow, however, that either the Republican voter or the citizens in general are thereby injured in the sense meant by this statute. A public nuisance injures all the public. For all that, it is only some person who is injured in some way differing from that of the great body of the public, who at common law may maintain an action for damages resulting from such nuisance. It is not every wrongful act which alters the result of the election which is punishable under the section in question. It must be some act which is intended to prevent some citizen or citizens from exercising their constitutional rights."

The mere grant of the right to vote and to have the vote counted is not in itself equivalent to the creation of an entire code of laws, regulating for the benefit of each individual voter the conduct of every other voter and establishing the rules and regulations by which an election can be conducted.

This view of the law is borne out by every adjudicated case relating to the right and privilege of citizens to vote in Federal elections, and to the rights and privileges generally of citizens under the Constitution and laws of the United States.

In the case of *United States v. Stone, supra*, the prosecution was had under Sec. 19. The facts in substance charged, that the defendants, who were supervisors of election for Charles County, Maryland, devised a form of ballot so as to make it practically impossible for many of the duly qualified and registered negor voters of said county to vote at a Congressional election. The indictment charged that the defendants conspired to injure a large number of duly qualified and registered negro voters in the free exercise of their right to vote at the election of a Representative in Congress by the preparation of the ballots above named, and stated fully the means by which this was to be accomplished.

It will be observed that the injury complained of was the injury to the individuals who were deprived of their votes. No injury to the candidates who were to be voted for at that election, nor to all the voters of the State or District, was claimed or charged, although the Court intimates that the acts of the defendants could have effected the general result of the election.

In the case of *United States vs. Mosley, supra*, also a prosecution under Sec. 19, it was charged that the defendants, who were officers and a majority of the County Election Board of Blaine County, Oklahoma, injured and oppressed all the voters of eleven precincts in that county, in the free exercise and enjoyment of their rights and privileges, by omitting the votes of said voters from their returns to the State election board.

Here Mr. Justice Holmes held that Sec. 19,—

> "Extends some protection at least to the right to vote for members of Congress."

and that,—

> "the right to have ones vote counted is as open to protection by Congress as the right to put a ballot in the box."

Here again, it will be observed that the injury complained of was the injury to each of the individual voters of the eleven precincts mentioned. No injury was alleged to have been sustained by the candidates for Congress, nor the voters of the State or District. The injury protected was distinct and individual to the voters whose vote was not counted. The indirect result upon the election was an incident. The material fact was that the citizen was deprived of his vote.

As Judge Hollister rightly said, (Case 575, Record p. 28);

> "Moreover, an analysis of the Mosley case shows the gravamen of the charge was not the injury to the voter through fraud affecting the result of the election. The injury to him was in not counting his vote, and the injury was to him alone, and for that reason only. It so happened that the votes in eleven precincts were not counted; but the principle would be the same if the officers had, by conspiring to that end, omitted to count one vote."

In the case of *United States v. Aczel, supra*, the first count of the indictment was under Section 19, and this was the only count subsequently passed upon by the Circuit Court of Appeals. It was there alleged that the defendants injured, etc., certain citizens of the United States, naming them, in the free exercise and

enjoyment of rights secured to them by the Constitution and laws of the United States, by force, threats and intimidation and by the use of pistols and other firearms, etc., thereby preventing them from exercising and enjoying the right and privilege of voting at a general election for candidates for United States Senator and Representative in Congress.

Here again the injury alleged was the injury to individuals, who were deprived of the free exercise and enjoyment of rights individually possessed by them. No injury was alleged to have been sustained by candidates for the offices voted for, nor by all of the voters of the State of Indiana, nor all of the voters of the Congressional district.

The same principle will be found to have been followed out by the Court in *Ex parte Yarbrough*, *supra*, where the rights of a negro citizen were injured, etc. by acts of the defendants in intimidating such citizen by assault, for the purpose of preventing and hindering him in the exercise of his right to vote for member of Congress.

The principle is still further illustrated in the line of cases protecting other rights under Section 19, which arise under the Constitution of the United States, and it will be found upon examination of these cases that the court has never undertaken to make the section applicable to the protection of any other right than the individual right of the individual citizen.

United States v. Waddell, 112 U. S. 76;
Logan v. United States, 144 U. S. 263;
In re Quarrels & Butler, 158 U. S. 532.

RIGHTS AND PRIVILEGES OF THE CANDIDATE

In the enumeration of the rights of citizens in the case of *United States v. Moore*, 129 U. S. 630, 633, it is said that among other rights and privileges secured to the citizens of the United States is, "the right to hold and seek office under the Federal government." This right is apparently based upon the principle that the Constitution having created the office and established in part the qualifications of those who might seek it, thereby by implication extended to the citizen the right of seeking and holding office under the Federal government.

So far as the adjudicated cases go, this is the entire right of the candidate;—that is, the right to seek and hold office. As found by Judge Hollister, this right was in no wise injured under the provisions of Section 19, by any of the facts set forth in the indictment in these cases. Relative to this matter, the court said (Case 575, Record p. 28):

> "In the indictments under consideration, the right of the candidates to be candidates was not injured, and, so far as appears the votes cast for them were counted: the right of voters to vote was not interfered with, and, so far as appears, their votes were counted. The gravamen of the charge involves an injury through the change in the result of the election brought about by bribery of voters. That result affected not only these candidates and all the voters in the first congressional district and all the voters in Ohio; but also the candidates for President and Vice President, and all the voters of the United States. The injury growing out of the result of the election was not dealt with in the Mosley case, and

> it may not be going too far to say that the exact point decided in that case is not applicable to these indictments at all, and that these indictments are to be ruled by the Gradwell case, and not by the Mosley case."

As a citizen, the candidate has such rights only with reference to an election free from bribery as are possessed by every other citizen; no more and no less.

His interest in the result is no greater and no less than the interest of the majority of voters, who may or may not adopt him.

And it may further be said that his right of being a candidate goes no further, in the creation of a code of laws pertaining to the honesty of elections, than the right of the voter himself.

In Austin on Jurisprudence, Vol 1, page 410, (3d. Ed.,) it is said that:

> "The test of a right is, that independently of positive provision, the acts or forbearance enjoined are not incapable of being enforced civilly, or in the way of a civil action, at the discretion or pleasure of the party towards whom they are to be done or observed.

If this be the test what enforceable rights, under the Constitution and laws of the United States with reference to bribery or a conspiracy to bribe at elections, have all the voters of the State, or a Congressional District, or a candidate? Can it be seriously said that a civil suit for damages could be maintained by either class of citizens?

Since the rights of the candidate and the voter are identical, the principles which apply to the rights of the voter above referred to, equally apply to the rights and privileges of the candidate.

CONCLUSION.

The policy of Congress with reference to the conduct of elections declared, defined and interpreted, is the ultimate test of any judicial conclusion with reference to the issues involved in this case. Whether the adoption of this policy is right or wrong is a legislative question. In the absence of any common law rights, the rights secured by the Constitution and Laws of the United States are judicial questions. With full recognition of these facts and in accord with the established law as interpreted by this court, we submit that the effort of the Government "to make a new application of an old law to an old type of crime" should not prevail.

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UNITED STATES *v.* BATHGATE ET AL.

UNITED STATES *v.* BURCKHAUSER ET AL.

UNITED STATES *v.* COONS ET AL.

UNITED STATES *v.* FARRELL ET AL.

UNITED STATES *v.* KLAYER ET AL.

UNITED STATES *v.* URICHO ET AL.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

Nos. 575–580. Argued January 16, 17, 1918.—Decided March 4, 1918.

It is a settled rule in the construction of statutes defining crimes that there can be no constructive offenses and that to warrant punishment the case must be plainly and unmistakably within the statute.

Criminal Code, § 19 (Rev. Stats., § 5508) punishing conspiracies to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, etc., does not include a conspiracy to bribe voters at a general election within a State where presidential electors, a United States senator and a representative in Congress are to be chosen.

This section means now what it meant when first enacted, as part of the Act of May 31, 1870, c. 114, 16 Stat. 140; see Crim. Code, §§ 339, 341; it aims to guard definite personal rights or privileges, capable of enforcement by a court, such as the right to vote for federal candidates, but not the political, non-judicable right or privilege, common to all, that the public shall be protected against harmful acts, to which latter appertain the general interests of candidate and voter in the fair and honest conduct of such elections.

In reaching this result the section is construed subject to the rule of strict construction, above stated, and in the light of the policy of Congress not to interfere with elections within a State except by clear and specific provisions.

The express repeal of that section of the original act which dealt with bribery (Act of May 31, 1870, *supra*, § 19) strengthens the conclusion.

Affirmed.

THE cases are stated in the opinion.

Mr. Assistant Attorney General Fitts for the United States:

Congress may, by appropriate legislation, protect any right or privilege arising from, created or secured by, or dependent upon the Constitution of the United States.

The right of suffrage in the election of presidential electors, United States senators, and members of Congress, is such a right. *Ex parte Siebold*, 100 U. S. 371, 388, 389; *Ex parte Yarbrough*, 110 U. S. 651, 663; *United States* v. *Mosley*, 238 U. S. 383; and other cases.

The right to be free from bribery is included in the general right of suffrage, and is deducible from the above decisions; and is, therefore, together with certain other rights of a somewhat kindred nature, secured to the citizen and protected by § 19 of the Criminal Code. This section deals with federal rights guaranteed to citizens by the Constitution, and with *all* such federal rights, and protects all without limit. While it may have been conceived in the purpose to protect particular rights of a peculiar class of citizens, the language employed is plain and unambiguous, and Congress having committed itself to its employment is presumed to have intended to bestow full and absolute protection to the extent of such rights. *United States* v. *Mosley*, *supra*. Can it be that the general words are broad enough to protect the citizen who votes from personal violence or intimidation (*Ex parte Yarbrough*, *supra*), and the election itself from corrupt count and false certification (*United States* v. *Mosley*, *supra*), and yet not broad enough to protect the suffrage rights of a citizen from annihilation by the bribery of voters and the

consequent undermining of the fabric of representative government? In each case the power and the duty of the government arise not solely for protection to the parties concerned, but from the necessity of the government itself that a right which it has guaranteed shall in fact be protected, viz, the right that every citizen has to be assured by that government that the President, the senators and the members of the House of Representatives will be elected by the votes of free electors, cast according to their free and unpurchased volitions. If, as has been decided in the *Mosley Case*, it is an offense under § 19 for an election board to conspire to make a false return, it is equally an offense for conspirators on the outside to mislead the board into making a false return.

This general right of suffrage includes the right (a) to cast the ballot without personal violence or the threat of it, *United States* v. *Aczel*, 219 Fed. Rep. 917; 232 Fed. Rep. 652; (b) to have the votes counted as cast and certified as correctly counted, *United States* v. *Mosley*, *supra;* and, the government asserts, (c) the right to have honest votes measured against honest votes. *Commonwealth* v. *Rogers*, 181 Massachusetts, 184, and cases cited; *Ex parte Yarbrough*, *supra*, pp. 662, 663; *Commonwealth* v. *Silsbee*, 9 Massachusetts, 417, 418; *People* v. *Hoffman*, 116 Illinois, 587, 599.

Under the Constitution and laws of the United States citizens properly qualified have the right to submit their names to the electorate for presidential electors, United States senators, and representatives in Congress. The government is so formed that citizens must be chosen for federal offices, and of necessity it follows that the right given entitles the citizen to a fair ballot and an honest count, free from bribery or corruption of any kind. *United States* v. *Gradwell*, 243 U. S. 476, 480. The right to have the elections for federal candidates conducted fairly, is implied as essential to the existence of the government.

All the rights created or secured by the Constitution are not found in acts of Congress. See *In re Neagle*, 135 U. S. 1; *In re Quarles*, 158 U. S. 532; *Motes* v. *United States*, 178 U. S. 458, 462; *Logan* v. *United States*, 144 U. S. 263; *Hodges* v. *United States*, 203 U. S. 1; *Rakes* v. *United States*, 212 U. S. 55; *United States* v. *Lancaster*, 44 Fed. Rep. 885, 896; *Felix* v. *United States*, 186 Fed. Rep. 685.

The means employed in carrying out the conspiracy to violate the right and whether or not they also offend state laws are immaterial. *United States* v. *Gradwell*, 243 U. S. 476, distinguished. See *Aczel* v. *United States*, 232 Fed. Rep. 652, *s. c.* 244 U. S. 650, 651.

Mr. John R. Holmes and *Mr. Sherman T. McPherson*, with whom *Mr. Froome Morris* and *Mr. M. Muller* were on the brief, for defendants in error.

Mr. Justice McReynolds delivered the opinion of the court.

Except as to parties, the indictments in these six cases are alike. Each contains three counts; the first and second undertake to allege a conspiracy to injure and oppress in violation of § 19, Criminal Code, and the third a conspiracy to defraud the United States, contrary to § 37. Demurrers were sustained upon the ground that rightly construed neither section applies to the specified acts.

Section 37, originally part of the Act of March 2, 1867, c. 169, 14 Stat. 471, provides: "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or

both." It was considered in *United States* v. *Gradwell*, 243 U. S. 476, and held not applicable in circumstances similar to those here presented. The Government has accordingly abandoned the third count.

Section 19 provides: "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States." And the two counts based thereon charge defendants with conspiring to injure candidates for presidential electors, the United States Senate and representative in Congress at the regular election in Ohio, November 7, 1916, also qualified electors who might properly vote thereat, in the free exercise and enjoyment of certain rights and privileges secured by Constitution and laws of the United States, namely—The right (a) of being a candidate (b) that only those duly qualified should vote (c) that the results should be determined by voters who had not been bribed and (d) that the election board should make a true and accurate count of votes legally cast by qualified electors and no others. The indictment further alleged the conspiracy was carried into effect as intended by purchasing votes of certain electors and causing election boards to receive them and make inaccurate returns.

The real point involved is whether § 19 denounces as criminal a conspiracy to bribe voters at a general election within a State where presidential electors, a United States

senator and a representative in Congress are to be chosen. Our concern is not with the power of Congress but with the proper interpretation of action taken by it. This must be ascertained in view of the settled rule that "there can be no constructive offenses, and before a man can be punished his case must be plainly and unmistakably within the statute" (*United States* v. *Lacher*, 134 U. S. 624, 628); and the policy of Congress to leave the conduct of elections at which its members are chosen to state law alone, except where it may have expressed a clear purpose to establish some further or definite regulation.

Departing from the course long observed, by Act of May 31, 1870, 16 Stat. 140, Congress undertook to prescribe a comprehensive system intended to secure freedom and integrity of elections. Section 19 of that act declares "that if at any election for representative or delegate in the Congress of the United States any person shall knowingly . . . by force, threat, menace, intimidation, bribery, reward, or offer, or promise thereof, or otherwise unlawfully prevent any qualified voter of any State of the United States of America, or of any Territory thereof, from freely exercising the right of suffrage; . . . or compel or induce by any such means, or otherwise, any officer of an election in any such State or Territory to receive a vote from a person not legally qualified or entitled to vote; . . . or aid, counsel, procure, or advise any such voter, person, or officer to do any act hereby made a crime, . . . every such person shall be deemed guilty of a crime, and shall for such crime be liable to prosecution in any court of the United States of competent jurisdiction, and, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for a term not exceeding three years, or both, in the discretion of the court, and shall pay the costs of prosecution." In pursuance of a well understood policy, the Act of February 8, 1894, c. 25, 28 Stat.

36, repealed the foregoing and other kindred sections in Act of 1870 but left in effect § 6, then § 5508, Rev. Stats., and now § 19, Criminal Code. See *United States* v. *Mosley*, 238 U. S. 383; *United States* v. *Gradwell*, *supra*.

The Government in effect maintains that lawful voters at an election for presidential electors, senator and member of Congress and also the candidates for those places have secured to them by Constitution or laws of the United States the right and privilege that it shall be fairly and honestly conducted; and that Congress intended by § 6, Act of 1870, to punish interference with such right and privilege through conspiracy to influence voters by bribery.

Section 19, Criminal Code, of course, now has the same meaning as when first enacted as § 6, Act of 1870 (see Criminal Code, §§ 339, 341); and considering the policy of Congress not to interfere with elections within a State except by clear and specific provisions, together with the rule respecting construction of criminal statutes, we cannot think it was intended to apply to conspiracies to bribe voters. Bribery, expressly denounced in another section of the original act, is not clearly within the words used; and the reasoning relied on to extend them thereto would apply in respect of almost any act reprehensible in itself, or forbidden by state statutes, and supposed injuriously to affect freedom, honesty, or integrity of an election. This conclusion is strengthened by express repeal of the section applicable in terms to bribery and we think is rendered entirely clear by considering the nature of the rights or privileges fairly within intendment of original § 6.

The right or privilege to be guarded, as indicated both by the language employed and context, was a definite, personal one, capable of enforcement by a court, and not the political, non-judicable one common to all that the public shall be protected against harmful acts, which is

here relied on. The right to vote is personal and we have held it is shielded by the section in question. *Ex parte Yarbrough*, 110 U. S. 651; *United States* v. *Mosley*, *supra*. The same is true of the right to make homestead entry, *United States* v. *Waddell*, 112 U. S. 76; also, of the right of one held by a United States marshal to protection against lawless violence. *Logan* v. *United States*, 144 U. S. 263. While the opinion in *United States* v. *Gradwell*, *supra*, does not determine the precise question now presented, it proceeds upon reasoning which contravenes the theory urged by counsel for the Government.

The court below properly construed the statute and its judgments are

Affirmed.